

## 25.002 Applicability of subparts.

The following table shows the applicability of the subparts. [Subpart 25.5](#) provides comprehensive procedures for offer evaluation and examples.

Subpart	Supplies for Use		Construction		Services Performed	
	Inside U.S.	Outside U.S.	Inside U.S.	Outside U.S.	Inside U.S.	Outside U.S.
25.1 Buy American—Supplies	X	—	—	—	—	—
25.2 Buy American—Construction Materials	—	—	X	—	—	—
25.3 Contracts Performed Outside the United States	—	X	—	X	—	X
25.4 Trade Agreements	X	X	X	X	X	X
25.5 Evaluating Foreign Offers—Supply Contracts	X	X	—	—	—	—
25.6 American Recovery and Reinvestment Act—Buy American statute—Construction Materials			X			
25.7 Prohibited Sources	X	X	X	X	X	X
25.8 Other International Agreements and Coordination	X	X	—	X	—	X
25.9 Customs and Duties	X	—	—	—	—	—
25.10 Additional Foreign Acquisition Regulations	X	X	X	X	X	X
25.11 Solicitation Provisions and Contract Clauses	X	X	X	X	X	X



EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET  
WASHINGTON, D.C. 20503

OFFICE OF FEDERAL  
PROCUREMENT POLICY

December 16, 2013

MEMORANDUM FOR CHIEF ACQUISITION OFFICERS  
SENIOR PROCUREMENT EXECUTIVES

FROM: Joseph G. Jordan  
Administrator

SUBJECT: Revisions to the Federal Acquisition Certification for Program and Project Managers (FAC-P/PM)

Gaining efficiencies, reducing redundancy, and supporting innovation in all areas of government are key components of the Administration's management initiatives. Having skilled, competent, and professional program and project managers (P/PMs) is essential to the success of critical agency missions. P/PMs ensure that requirements are appropriately written, performance standards are established, and contractors deliver what they promise. P/PMs develop requirements, lead integrated project teams (IPTs), and oversee budgeting and governance processes, all of which are critical to ensuring that agency mission needs are filled and expected outcomes achieved. Establishing rigorous professional development requirements for this critical workforce in civilian agencies will better position the government for success in its efforts to acquire and manage goods and services.

Developing and maintaining professional, effective, and capable P/PMs requires an investment in their training and development, which is the focus of this update of the Federal Acquisition Certification (FAC) for P/PMs. The initial FAC for P/PMs was issued in April 2007 and while many important steps toward strengthening P/PMs have been taken since then, more work remains. The revised program is designed to strengthen civilian agency P/PMs to improve program outcomes, and reflects the need to improve the management of high-risk, high-impact programs.

As part of the Office of Federal Procurement Policy's (OFPP) October 2009 Acquisition Workforce Development Strategic Plan for Civilian Agencies,<sup>1</sup> a multi-agency Functional Advisory Board (FAB)<sup>2</sup> was established to refresh the P/PM competencies and recommend improvements to the certification standards. This updated FAC-P/PM reflects the recommendation from the FAB and input from the Chief Acquisition Officers (CAO) Council, Chief Information Officers Council, the Federal Acquisition Institute (FAI), and other stakeholders. OFPP will work with the FAB to identify additional classroom training and development opportunities to continuously improve this FAC-P/PM.

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<sup>1</sup> Available at [http://www.whitehouse.gov/sites/default/files/omb/assets/procurement\\_workforce/AWF\\_Plan\\_10272009.pdf](http://www.whitehouse.gov/sites/default/files/omb/assets/procurement_workforce/AWF_Plan_10272009.pdf)

<sup>2</sup> You can find information about the PM FAB at [http://www.fai.gov/drupal/sites/default/files/PPM\\_Charter.pdf](http://www.fai.gov/drupal/sites/default/files/PPM_Charter.pdf).

While P/PMs are important for all Federal programs, OMB's Office of E-government and Information Technology has highlighted, through its policies, the importance of strong P/PMs in managing Information Technology (IT) programs. As a result, OMB worked with the Office of Personnel Management to add the title "IT Program Manager" to the Job Family Standard for Information Technology, and to develop IT Program Manager competencies and the "IT Program Management Career Path Guide."<sup>3</sup> The FAC-P/PM builds upon this good work and adds core-plus specialized certifications, the first one being in the area of IT. Other core-plus specialized certifications are being considered by OFPP.

In this refreshed FAC-P/PM, the following chart details the changes that have been made to strengthen the P/PM workforce.

<b>FAC-P/PM of April 25, 2007</b>	<b>Refreshed FAC-P/PM</b>
<b>Applicability:</b>	
At a minimum, P/PMs assigned to programs considered major acquisition must be senior-level certified.	All acquisition P/PMs must be certified at the appropriate level, as determined by their agency. Considerations for determining the appropriate level have been added.
<b>Allowability of Waivers:</b>	
The CAO could waive all or part of the FAC-P/PM requirements.	Extensions to the required certification date by the CAO are allowed, but waivers are not.
<b>Competencies:</b>	
Competencies were provided for each certification level.	Competencies have been updated for each of the three certification levels, and performance outcomes for competencies at each level have been defined, which better describes the required knowledge, skills and abilities needed for successful performance.
<b>Training Requirements:</b>	
Inflexible minimum hours of training and learning outcomes areas were tied to various functional areas.	Training requirements are more flexible with requirements ranging from approximately 80 - 120 hours collectively for each of the three levels, depending upon the instructional design and method of training delivery. Training can be tailored more to the individual and his/her competency gaps. Performance outcomes have been added.
<b>Training Classes:</b>	
FAI developed a P/PM training blueprint to guide P/PM candidates to appropriate training vendors and classes.	FAI has developed and identified more certification training making it easier for agencies and P/PM candidates to determine which classes are available. Sample curricula

<sup>3</sup> For more information on these efforts, see [http://www.whitehouse.gov/sites/default/files/omb/assets/egov\\_docs/25-point-implementation-plan-to-reform-federal-it.pdf](http://www.whitehouse.gov/sites/default/files/omb/assets/egov_docs/25-point-implementation-plan-to-reform-federal-it.pdf), <https://www.opm.gov/policy-data-oversight/classification-qualifications/classifying-general-schedule-positions/standards/2200/gs2200a.pdf>, <http://www.chcoc.gov/transmittals/TransmittalDetails.aspx?TransmittalID=4058>, and [http://archive.opm.gov/hrd/lead/Career\\_Path\\_IT\\_Management.pdf](http://archive.opm.gov/hrd/lead/Career_Path_IT_Management.pdf).

<b>FAC-P/PM of April 25, 2007</b>	<b>Refreshed FAC-P/PM</b>
	are provided along with various training options from FAI, DAU, the VA Acquisition Academy and commercial vendors.
<b>Senior-Level Experience:</b>	
Senior/expert P/PMs were required to have four years of program and project management experience on Federal projects and/or programs.	Senior-level P/PMs are required to have four years of program and project management experience, which shall include a minimum of one year of experience on Federal programs and/or projects, within the last ten years. This experience can be obtained as either a Federal employee or a contractor.
<b>Core-plus Specialized Certification:</b>	
None available	General core-plus requirements have been added to the core FAC-P/PM certification along with specific requirements for a core-plus IT certification.
<b>Management Information System:</b>	
The Acquisition Career Management Information System (ACMIS) was the official system of records for the FAC-P/PM program.	The Federal Acquisition Institute Training Application System (FAITAS) is the official system of records for the FAC-P/PM program. All acquisition P/PMs are required to be registered in FAITAS by January 1, 2014 <sup>4</sup> .

This revised FAC-P/PM program is effective March 31, 2014. At that time, current P/PMs certified under the previous FAC-P/PM shall be grandfathered in at their current level of certification, as long as their continuous learning requirements are up-to-date. For those grandfathered P/PMs seeking a higher level certification after this date, the new requirements must be met.

The FAC-P/PM is only one component of strengthening the P/PM function. Equally important is selecting the right individuals with appropriate experience and leadership skills who will effectively collaborate and communicate with other members of the acquisition team and other stakeholders within the organization. If you have questions regarding the FAC-P/PM program or suggestions for other core-plus specializations, please contact Joanie Newhart at (202) 395-4821 or [jnewhart@omb.eop.gov](mailto:jnewhart@omb.eop.gov).

Attachment

cc: Chief Information Officers  
Chief Human Capital Officers  
Chief Financial Officers  
Acquisition Career Managers

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<sup>4</sup> Available at: <http://www.whitehouse.gov/sites/default/files/omb/procurement/memo/increasing-efficiencies-in-the-training-development-and-management-of-the-acquisition-workforce.pdf>

## Federal Acquisition Certification for Program and Project Managers (FAC-P/PM)

**1. Purpose.** The purpose of the Federal Acquisition Certification for Program and Project Managers (FAC-P/PM) is to establish general training, experience and development requirements for program and project managers (P/PMs) in civilian agencies based upon core competencies needed to successfully manage programs. This certification program will promote continued development of essential knowledge, skills and abilities for P/PMs to improve program outcomes.

**2. Effective Date.** The revised FAC-P/PM program is effective March 31, 2014.

**3. Authority.** The FAC-P/PM is issued pursuant to the Office of Federal Procurement Policy (OFPP) Act, 41 U.S.C. § 1101 et. seq., and OFPP Policy Letter 05-01, which established a requirement for Federal acquisition certification programs.

**4. Background.** The Services Acquisition Reform Act of 2003, P.L. 108-136, expanded the definition of acquisition to include functions performed by P/PMs, such as requirements and business case development, technical direction, and life-cycle management. In April 2007, OFPP issued the first FAC-P/PM,<sup>5</sup> and in October 2009, OFPP issued the Acquisition Workforce Development Strategic Plan,<sup>6</sup> which established a multi-agency Functional Advisory Board (FAB) to improve the FAC-P/PM program and make ongoing recommendations to more effectively manage the P/PM workforce. This FAC-P/PM revision, which refreshes the original program, is part of the continuous improvement of the P/PM function.

**5. Applicability.** The FAC-P/PM program applies to all executive agencies, except the Department of Defense (DOD).<sup>7</sup> This is a certification program for Federal acquisition workforce members, and as such, the certification shall be accepted by all civilian agencies as evidence that an employee meets core training and experience requirements to perform P/PM functions, though authorization to perform P/PM functions must be in accordance with agency policy.<sup>8</sup> Agencies may require additional competencies and experience if needed for their agency-specific projects and programs.

The FAC-P/PM is mandatory for all P/PMs described in the definitions provided in Attachment 2. Program managers assigned to programs considered major acquisitions by their agency, and as defined by Office of Management and Budget (OMB) Circular A-11 (IT and non-IT), must be senior-level certified unless an extension is granted by the appropriate agency official (see paragraph below). Project managers assigned to lead projects within these major acquisitions

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<sup>5</sup> Available at [http://www.whitehouse.gov/sites/default/files/omb/assets/omb/procurement/workforce/fed\\_acq\\_cert\\_042507.pdf](http://www.whitehouse.gov/sites/default/files/omb/assets/omb/procurement/workforce/fed_acq_cert_042507.pdf).

<sup>6</sup> Available at [http://www.whitehouse.gov/sites/default/files/omb/assets/procurement\\_workforce/AWF\\_Plan\\_10272009.pdf](http://www.whitehouse.gov/sites/default/files/omb/assets/procurement_workforce/AWF_Plan_10272009.pdf).

<sup>7</sup> Department of Defense (DOD) will continue to follow DOD policy.

<sup>8</sup> As necessary, civilian agencies covered by this FAC-P/PM program may require additional training and experience, beyond the core FAC-P/PM requirements.

must be, at a minimum, mid-level certified. Additionally, it is recommended that the assigned leads of primary integrated project teams (IPTs) supporting agency major acquisitions are mid-level certified. Other P/PMs should be certified at an appropriate level as determined by their agency. The completion date for these certifications is 12 months from the date of assignment to the program or project.

While obtaining the FAC-P/PM certification may qualify an individual for a P/PM position, selection and assignment to that position is an agency decision. This certification program provides a structured approach to developing program and project managers and is not intended to govern how agencies assign personnel to programs and projects.

## **6. Certification Program Administration.**

**a. General.** The Chief Acquisition Officer (CAO)<sup>9</sup> is responsible for developing workforce policies that apply the FAC-P/PM requirements as necessary to ensure agency P/PMs have essential program and project management competencies. The P/PM competency-based model serves as a foundation. Agencies may build on these requirements by adding additional technical and/or management performance outcomes for particular functional areas or agency programs. As such, the certification process shall be managed by each agency. The CAO may delegate implementation authority and functional responsibilities to other senior leaders, such as the Senior Procurement Executive (SPE) or Chief Information Officer (CIO), as appropriate for the agency.

**b. Extension Authority.** The agency's CAO, or his/her designee, may extend in writing, on a case-by-case basis, the date upon which a P/PM must be certified by an additional 12 months, if it is in the best interest of the agency. Written justification shall be provided that includes the reason for and conditions of the extension, and the agency's Acquisition Career Manager (ACM) or designee shall maintain all supporting documentation.

**c. Oversight and Continuous Improvement.** The OFPP Associate Administrator for Acquisition Workforce Programs, in consultation with the Chief Acquisition Officers Council (CAOC), the Chief Information Officers Council (CIOC), the Federal Acquisition Institute (FAI), the FAI Board of Directors, the Interagency Acquisition Career Management Council (IACMC), the P/PM FAB and other organizations, as appropriate, shall:

- provide general program oversight and direction,
- periodically revalidate the P/PM competencies and certification standards,
- identify additional training and development opportunities, and
- recommend improvements to this FAC-P/PM to the Administrator for Federal Procurement Policy to ensure the program reflects the needs of all civilian agencies.

Upon agency or OFPP request, FAI will review existing agency programs against the requirements contained in this document to identify the extent to which an agency's certification program meets the FAC-P/PM guidelines. In addition, FAI will periodically review agencies'

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<sup>9</sup> For agencies without a CAO, the Senior Procurement Executive shall be responsible for managing the FAC-P/PM at the agency.

implementation of this guidance to ensure the program remains rigorous and the standards for certification training, experience and continuous learning are consistently applied by all civilian agencies.

Specific FAI responsibilities for administration of the FAC-P/PM are to:

- develop, review, and revise competencies and certification standards,
- collaborate with agency ACMs on acquisition workforce development,
- collaborate with agency acquisition training organizations on training development and delivery,
- manage the Federal Acquisition Institute Training Application System (FAITAS)(see paragraph 8),
- review agency certification programs,
- analyze acquisition workforce and human capital information, and
- in collaboration with civilian agencies, develop training standards to be used by agencies, vendors, or other organizations in assessing existing courses against these standards or developing new courses to satisfy the requirements of the FAC-P/PM.

Changes to the program will be made through updates to this document. FAI will issue guidance and other information through its website<sup>10</sup>.

The certification process, including assessment of applications, will be managed by each agency. The agency ACM, appointed by the CAO or designee under Policy Letter 05-01, is responsible for administering the agency certification program in accordance with this guidance and any subsequent guidance provided by OFPP or FAI. Authority for overseeing the agency FAC-P/PM program, resolving disputes, and granting certifications will be at the CAO or designee level. Essential agency responsibilities for program administration are to:

- ensure all P/PMs are registered in FAITAS,
- identify and assess the qualifications of the agency's acquisition P/PM workforce,
- develop the P/PM workforce in accordance with the standards in this program,
- determine appropriate certification levels and issue FAC-P/PM certifications,
- issue agency FAC-P/PMs as appropriate, and
- manage the continuous learning process.

FAITAS and tools on the FAI website at [www.fai.gov](http://www.fai.gov) can assist agencies with all of these responsibilities.

## **7. Certification Requirements for P/PMs.**

**a. General.** The FAC-P/PM is founded on (1) core competencies that are considered essential for successful program and project management, (2) experience requirements, and (3) continuous learning to maintain skills currency. FAC-P/PM contains three levels of certification: entry-, mid- and senior-level. FAC-P/PM-required knowledge, skills, and experience at each of the

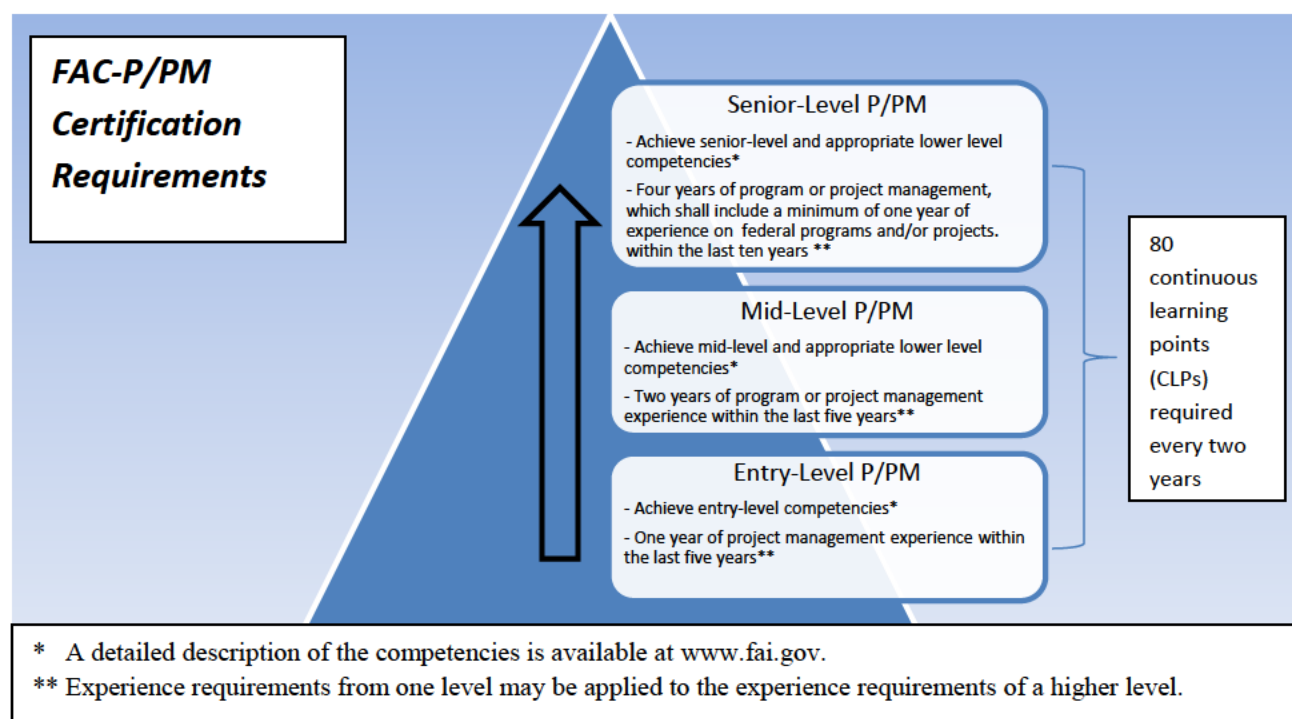
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<sup>10</sup>FAC-P/PM guidance and other information will be available at [www.fai.gov](http://www.fai.gov) under the Certification tab.



levels are detailed in Attachment 3. The FAC-P/PM Competency Model with descriptions of each certification level, a list of the competencies, and performance outcomes for each competency at each level is available at [www.fai.gov](http://www.fai.gov). Achieving each certification level in progression from entry- through senior-level is not required; however, P/PMs may only be certified at a certain level after they achieve all competencies for that certification level. In addition, lower level competencies needed to perform at the level being certified must be demonstrated to the satisfaction of the certifying agency. Templates to assist agencies in validating the certification requirements are available at [www.fai.gov](http://www.fai.gov).

FAC-P/PM certification requirements are detailed in the following chart:



**b. Transition of Current P/PMs.** Absent agency action, current P/PMs shall be grandfathered in on the effective date at their current level of certification, as long as the P/PM's continuous learning requirements are current. For those grandfathered P/PMs seeking a higher level certification after this date, the new requirements must be met. Additionally, when meeting the 80 hour continuous learning point (CLP) requirement, it is recommended that grandfathered P/PMs take newly required/recommended classes not previously taken to maintain skills currency.

**c. Competencies for P/PMs.** The establishment of core competencies ensures the program and project management community possesses common skills and experiences. The objective of the FAC-P/PM is to align the essential competencies across the Federal Government's acquisition workforce. An applicant can satisfy the competency requirements through successful completion of certification or equivalent training, completion of comparable education or certification programs, or demonstration and documentation of knowledge, skills, and abilities through the process of fulfillment. Some agencies may have additional competencies associated with



essential mission areas that overlay these common elements. The current competency model for P/PMs is maintained by FAI at [www.fai.gov](http://www.fai.gov). These essential competencies will be revalidated periodically by the P/PM FAB and the P/PM certification program will be updated as needed to meet current and future acquisition workforce requirements and to reflect emerging trends in the government's acquisition practices.

**d. Appropriate Level of Certification.** The appropriate level of P/PM certification needed to lead a project or program is determined by the agency. In determining the appropriate level, agencies should consider:

- (1) business risk (as it relates to cost and schedule of the project or program),
- (2) technical risk (which relates to the performance attributes of the acquired item that current technology can deliver),
- (3) criticality of the project or program to the agency mission,
- (4) level of stakeholder interest and oversight, and
- (5) complexity of the project or program.

**e. Training.** Each certification level requires a range of approximately 80 to 120 hours of training, depending upon the instructional design and method of training delivery. With this approach, training vendors are expected to provide an instructional method best-suited to deliver the learning outcomes that align to the competencies. While a specific curriculum is not articulated, training options that can assist agencies and individuals in determining their training and development needs are maintained by FAI at [www.fai.gov](http://www.fai.gov) under the certification tab.

**f. Experience.** Experience requirements for each level of certification are:

- **Entry-Level P/PM** – one year of project management experience within the last five years.
- **Mid-Level P/PM** – two years of program or project management experience within the last five years.
- **Senior-Level P/PM** – four years of program or project management experience, which shall include a minimum of one year of experience on Federal programs and projects, within the last ten years.<sup>11</sup>

Experience requirements from one level may be applied to the experience requirements of a higher level.

**g. Continuous Learning.** To maintain a FAC-P/PM, certified professionals are required to earn 80 CLPs of skills currency every two years. The two-year anniversary is set by the date the individual is certified. Further information on CLPs is maintained by FAI at [www.fai.gov](http://www.fai.gov). Individuals and their supervisors are responsible for maintaining continuous learning records through FAITAS, which is available on FAI's website. Agency ACMs, or their designees, will manage continuous learning requirements to ensure certifications remain active. If an individual does not meet the 80 hour CLP requirement, his or her certification will lapse and the agency

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<sup>11</sup> The one year of experience on Federal programs and/or projects can be as a Federal employee or as a contractor.

may remove the manager from the program or project. In order to reinstate the certification, at a minimum, he or she must complete 80 hours of continuous learning within a two year period<sup>12</sup>.

**h. Reciprocity With Other Certifications:** Individuals certified as mid-level FAC-P/PMs are considered to have met the FAC-COR requirements for Level II. Individuals certified as senior-level FAC-P/PMs are considered to have met the FAC-COR requirements for Level III. These individuals must provide their FAC-P/PM certificates and continuous learning documents<sup>13</sup> to their ACMs or designees for FAC-COR certification. Conversely, however, an individual with FAC-COR certification does not necessarily meet the requirements for the FAC-P/PM.

**8. Federal Acquisition Institute Training Application System (FAITAS).** For all civilian agencies, FAITAS will be the official system of records for the FAC-P/PM program. Agencies and individuals are responsible for maintaining certification supporting documentation for quality assurance purposes. All acquisition P/PMs<sup>14</sup> are required to be registered in FAITAS by January 1, 2014.

**9. Certification by Other Organizations.** Agencies will follow the guidance and recommendations of FAI regarding certification equivalency to the FAC-P/PM for certifications sponsored by other Federal or non-Federal organizations, such as the Department of Defense, or the Project Management Institute (PMI). Certification sponsors or organizations are encouraged to contact FAI for details regarding obtaining certification equivalency.

## **10. Core-Plus Specialization.**

**a. General.** The purpose of the FAC-P/PM core-plus specialization is to establish additional training, experience and continuous learning requirements for FAC-P/PM certified personnel who manage specific investments requiring specialized knowledge, skills and abilities. The first core-plus area to be addressed in this certification program is for information technology (FAC-P/PM-IT), the details of which are at Attachment 4. This new core-plus specialization for IT P/PMs was developed in collaboration with OMB's Office of E-government and Information Technology. New core-plus areas will be recommended by the P/PM FAB, approved by OFPP, and maintained by FAI at [www.fai.gov](http://www.fai.gov).

**b. Assignment.** Specialization is not mandatory for all P/PMs; however, at a minimum, it must be held by P/PMs assigned to those programs within an established FAC-P/PM core-plus area. P/PMs managing specialty investments determined to be major acquisitions as described in the core FAC-P/PM must hold senior level FAC-P/PM certification in addition to the specialization.

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<sup>12</sup> In order for the certification to be reinstated, the individual must complete the required hours to meet the previous 80 hour requirement. Following reinstatement, the individual must complete the next 80 hour continuous learning (CL) requirement in the existing CL period; i.e., the two year anniversary date does not change. For example, PM Paul was certified on August 20, 2007. He maintained CL requirements through the anniversary periods from 2007 through 2011. From August 21, 2011 through August 20, 2013, Paul only obtained 60 hours of CLPs. His certification has lapsed. In September 2013, Paul attends a 40 hour training course. Twenty hours of the course can now be used for the previous two year cycle in order to be reinstated, the remaining 20 hours counts toward the 80 hour requirement for August 21, 2013 through August 20, 2015.

<sup>13</sup> Or the electronic equivalent of this process, if applicable.

<sup>14</sup> See definition of acquisition in Attachment 2.

The required completion date for a specialization is one year from the date of assignment to a program or project requiring a FAC-P/PM core-plus P/PM, or 18 months from establishment of the specialty, whichever is later. Obtaining a FAC-P/PM core-plus specialization is not intended to confer qualification for any specific assignment. Assignment of personnel remains an agency-specific function, and certification as a FAC-P/PM or FAC-P/PM core-plus constitute one aspect for agencies to consider in the assignment of P/PMs.

**c. Competencies.** FAI shall identify the competencies required for a FAC-P/PM core-plus specialization based upon the FAC-P/PM core-plus model. As with FAC-P/PM, an applicant can satisfy the core-plus competency requirements through training, education, other relevant certification programs, or demonstration and documentation through fulfillment of knowledge, skills, and abilities. The competencies for a FAC-P/PM core-plus specialization shall be maintained by FAI at [www.fai.gov](http://www.fai.gov). Core-plus competencies will be updated periodically to meet current and future acquisition workforce requirements and to reflect emerging trends in the government's acquisition practices. To obtain a FAC-P/PM core-plus specialization, some agencies may require additional competency requirements beyond the core competencies established by FAI for a given core-plus area.

**d. Certification Levels.** P/PMs requiring FAC-P/PM core-plus specialization must also be core FAC-P/PM certified as described below. The ability to specialize implies a demonstrated level of skill beyond the entry level. For this reason, a FAC-P/PM core-plus specialization will only be granted to holders of mid- and senior-level FAC-P/PMs. For those P/PMs having a core-plus specialization, advancing from mid-level to the senior-level core FAC-P/PM certification carries with it the core-plus specialization, assuming the core-plus continuous learning requirements have been met.

**e. Training.** Training that is current and results in gaining the required P/PM core-plus competencies is strongly recommended, as technology and best practices in these specialty areas may evolve rapidly. The primary outcome of training is not to require a specific number of hours, but to provide an instructional approach best suited to deliver the learning outcomes that align to the competencies. While a specific curriculum is not articulated, training plans for FAC-P/PM core-plus specializations that can assist agencies and individuals in determining their training and development needs will be maintained by FAI at [www.fai.gov](http://www.fai.gov).

**f. Experience.** At least two years of program or project management experience supporting projects and/or programs within the given core-plus area is required to obtain the FAC-P/PM Core-Plus specialization. Core-plus experience can be considered in obtaining core FAC-P/PM certification, or it may be in addition to that experience. Specific experience requirements for future core-plus areas will accompany the core-plus competency models and be available on [www.fai.gov](http://www.fai.gov).

**g. Continuous Learning.** As required by core FAC-P/M, FAC-P/PM core-plus professionals are required to earn 80 CLPs of skills currency every two years. Maintenance of CLPs is shared between the core-plus area and the core FAC-P/PM continuous learning requirement. At least 20 of the 80 CLPs required must be dedicated to continuous learning in topics associated with the core-plus area. If an individual fails to obtain the 80 CLP requirement, the core FAC-P/PM and core-plus specialization will simultaneously lapse. To regain certification status after a

certification has lapsed, the 80 CLP requirement must be completed within the two year period, including the requirement for 20 of the 80 CLPs dedicated to continuous learning in topics associated with the core-plus area.<sup>15</sup>

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<sup>15</sup> See footnote 12 on page A-6 for an example.

## Definitions<sup>16</sup>

**1. Acquisition:** the conceptualization, initiation, design, development, testing, contracting, production, deployment, logistics support, modification, and disposal of systems, supplies, or services (including construction) to satisfy formal agency needs. Acquisitions result from investment decisions, respond to approved requirements, align to strategic direction, and are guided by approved baselines.

**2. Equivalency.**

- a. **Course Equivalency:** exists between two or more specific acquisition-related courses if the learning objectives and assessment methodology for the courses being compared are equal. For example, when comparing acquisition course X101 with acquisition course Y001, regardless of training provider, course name or designation code, if the learning objectives and the assessment methodology are the same for the courses being compared, they are said to be equivalent.
- b. **Certification Equivalency:** the degree of equivalency between the certifying standards (training, education and experience criteria) among different certification-granting organizations. A determination of certification equivalency usually occurs when acquisition professionals possess a certification issued by a different certifying organization or institution, such as DOD or PMI, and wish to use this certification as evidence of completing all or a portion of the FAC-P/PM certification standards.

**3. Fulfillment:** a process of providing detailed, verifiable accounts of an individual's acquisition-related experience as evidence of demonstrated acquisition competence, in lieu of successful completion of the learning outcomes of specific acquisition certification training courses.<sup>17</sup>

**4. Integrated Project Team (IPT):**<sup>18</sup> a multi-disciplinary team led by a project or program manager responsible and accountable for planning, budgeting, procurement and life-cycle management of the investment to achieve its cost, schedule and performance goals. Team skills include: budget, finance, capital planning, procurement, user needs, program needs, architecture, earned value management, security and other skills as needed.

**5. Project:** a planned acquisition undertaking with a definite beginning and clear termination point which produces a defined capability. A project is an individually planned, approved and managed basic building block related to a program. A project is not constrained to any specific element of the budget structure, however, basic research, maintenance of equipment and facilities, and operations are not considered projects.

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<sup>16</sup> Definitions for acquisition, project, program, project manager and program manager are from DHS Acquisition Management Directive 102.

<sup>17</sup> The PM FAB will provide helpful tools to assist agencies with the fulfillment process.

<sup>18</sup> For more information on IPTs, see OMB's Capital Programming Guide and Guidance on Exhibit 300, "Planning, Budgeting, Acquisition, and Management of IT Capital Assets."

**6. Program:** directed, funded acquisitions that provide new, improved, or continuing systems or services in response to an approved need. Programs are divided into levels established to facilitate decision-making, execution, and compliance with statutory and regulatory requirements and may be composed of multiple projects, services contracts, interagency agreements, and other types of acquisitions. With a systems or services capability focus, programs usually tie together an agency's higher-level programming and budgeting process with the agency strategic plan.

**7. Project Manager:** the acquisition workforce member assigned responsibility for accomplishing a specifically designated work effort or group of closely related efforts established to achieve stated or designated objectives, defined tasks, or other units of related effort on a schedule, within cost constraints and in support of the program mission or objective. The project manager is responsible for the planning, controlling, and reporting of the project, and for the management of required functions, including acquisition planning, definitization of requirements, business case development, performance of the schedule, and formulation, justification and execution of the budget. The project manager is responsible for effectively managing project risks to insure effective systems and services are delivered through a total life-cycle approach to the end user on schedule, within budget and at the required levels of performance. A program manager may also serve as project manager for projects within the scope of the program.

**8. Program Manager:** the acquisition workforce member with the responsibility, and relevant discretionary authority, who is uniquely empowered to make final scope-of-work, capital-investment, and performance acceptability decisions on assigned acquisition programs. The program manager is also responsible for meeting program objectives or production requirements through the acquisition of any mix of in-house, contract, or reimbursable support resources. Program managers are responsible to stakeholders for management and oversight of subordinate projects within the scope of the overall program, as well IPTs. The program manager is ultimately responsible for effectively managing all business and technical risks of the program to insure effective systems and services are delivered to the end user on schedule, within budget and at the required levels of performance.

### FAC-P/PM-Required Knowledge, Skills and Experience

<b>Entry Level</b>	
<b>Knowledge and Skills</b>	<b>Experience</b>
<p>The knowledge, comprehension and foundational application of general project management tenets, including:</p> <ul style="list-style-type: none"> <li>• knowledge and skills to contribute as an IPT member;</li> <li>• ability to manage cost, schedule and performance attributes of low risk and relatively simple projects or manage more complex projects under the supervision of a more experienced project or program manager;</li> <li>• general understanding of project management practices, including risk management, budgeting, scheduling, technology management, performance-based business practices, cost management, stakeholder relations, program control and governance;</li> <li>• comprehension of an agency's requirements development and life-cycle management processes; and</li> <li>• ability to define and construct various project documents with appropriate mentoring and supervision.</li> </ul>	<p>At least one year of project management experience within the last five years including:</p> <ul style="list-style-type: none"> <li>• being a contributing member of an acquisition IPT;</li> <li>• constructing a work breakdown structure;</li> <li>• preparing project analysis documents and tailoring acquisition documents to ensure that quality, effective, efficient systems or products are delivered;</li> <li>• analyzing and/or developing requirements;</li> <li>• monitoring performance and assisting with quality assurance; and</li> <li>• analyzing and/or developing budgets.</li> </ul>

<b>Mid-Level</b>	
<b>Knowledge and Skills</b>	<b>Experience</b>
<p>The demonstrated application and fundamental analysis skills and abilities in the general program management tenets, including:</p> <ul style="list-style-type: none"> <li>• knowledge and skills to manage projects or program segments of low to moderate risks with little or no supervision;</li> <li>• ability to apply management processes, including requirements development processes and performance-based acquisition principles supporting the development of program baselines;</li> <li>• ability to plan and manage technology integration, and apply agency policy on interoperability and product support;</li> </ul>	<p>At least two years of program or project management experience within the last five years, including:</p> <ul style="list-style-type: none"> <li>• leading IPTs;</li> <li>• performing market research and analysis;</li> <li>• developing documents for risk and opportunity management;</li> <li>• developing and applying technical processes and technical management processes;</li> <li>• performing or participating in source selection;</li> <li>• planning and preparing acquisition</li> </ul>



<b>Mid-Level</b>	
<b>Knowledge and Skills</b>	<b>Experience</b>
(continued) <ul style="list-style-type: none"> <li>• ability to identify and track actions to initiate an acquisition program or project using cost/benefit analysis and business case development;</li> <li>• ability to understand and apply the process to prepare information for a baseline or milestone review, and assist in development of ownership cost estimates and applications; and</li> <li>• ability to integrate and manage program cost, schedule and performance through application of comprehensive risk management planning, accounting for the scale of complexity between program and project level acquisitions.</li> </ul>	(continued) <ul style="list-style-type: none"> <li>• strategies;</li> <li>• applying performance-based business processes;</li> <li>• developing and managing a project budget;</li> <li>• preparing and presenting a business case; and</li> <li>• contributing to program strategic planning.</li> </ul>

<b>Senior Level</b>	
<b>Knowledge and Skills</b>	<b>Experience</b>
The knowledge and skills to manage and evaluate moderate to high-risk programs or projects that require significant acquisition investment and agency collaboration, including: <ul style="list-style-type: none"> <li>• ability to manage and evaluate a program and create an environment for program success;</li> <li>• ability to manage and evaluate the integration of the requirements development, and budgeting and governance processes, and apply comprehensive risk management planning, accounting for the scale of complexity between projects and programs;</li> <li>• ability to communicate and defend the acquisition approach before decision makers and stakeholders;</li> <li>• accomplished leadership and mentoring skills to influence subordinate-level team members in managing the</li> </ul>	At least four years of program or project management experience, which shall include a minimum of one year of experience on Federal programs and project, within the last ten years <sup>19</sup> , including: <ul style="list-style-type: none"> <li>• synthesizing and evaluating the efforts and products of functional working groups and IPTs;</li> <li>• managing and evaluating acquisition investment performance;</li> <li>• developing and managing a program budget;</li> <li>• building and presenting a successful business case; and</li> <li>• reporting program results, strategic planning, and high-level communication with internal and external stakeholders.</li> </ul>

<sup>19</sup> The one year of experience on Federal programs and/or projects can be as a Federal employee or as a contractor.

<b>Senior Level</b>	
<b>Knowledge and Skills</b>	<b>Experience</b>
(continued) functional domains of program management; and <ul style="list-style-type: none"> <li>• expert ability to use, manage, and evaluate management processes, including performance-based management techniques and earned value management as it relates to acquisition investments.</li> </ul>	

## **FAC-P/PM Core-Plus Specialization in Information Technology (FAC-P/PM-IT)**

1. **General.** The Office of Federal Procurement Policy (OFPP) introduced the concept of a core-plus certification for Information Technology (IT) acquisition professionals in its *Guidance for Specialized Information Technology Acquisition Cadres* dated July 13, 2011<sup>20</sup>. In addition, the Office of Personnel Management (OPM) released the *Competency Model for IT Program Management* on July 12, 2011<sup>21</sup>.
2. **Effective Date.** The FAC-P/PM core-plus IT specialization is effective March 31, 2014.
3. **Applicability.** The FAC-P/PM core-plus specialization in information technology (FAC-P/PM-IT) is for those P/PMs primarily responsible for the acquisition of IT investments.
4. **Assignment.** P/PMs managing IT programs that support, or have key integration functions with, major non-IT programs shall be at least mid-level certified in FAC-P/PM-IT. Other IT P/PMs will be certified at an appropriate level as determined by their agency. In addition to programs identified as IT investments, agencies shall determine the need for FAC-P/PM-IT certified P/PMs for those programs which contain a mixed investment of IT and non-IT functional components. The required date for a specialization is one year from the date of assignment to a program or project requiring a FAC-P/PM-IT P/PM or 18 months from the effective date of this core-plus specialization, whichever is longer.
5. **Certification Levels.** P/PMs managing major IT investments shall hold senior level FAC-P/PM-IT specialization. The ability to specialize implies a demonstrated level of skill beyond the entry level, so the FAC-P/PM-IT specialization will only be granted to holders of mid- and senior-level FAC-P/PMs. Mid-level FAC-P/PM-IT specialization holders advancing to a senior-level FAC-P/PM carry their IT core-plus specialization to the higher level as long as the continuous learning requirements have been met.
6. **Competencies.** The competency model for the FAC-P/PM-IT is available on FAI's website at [www.fai.gov](http://www.fai.gov). An applicant can satisfy the core-plus competency requirements through training, education, other relevant certification programs, or demonstration and documentation through fulfillment of knowledge, skills, and abilities. To obtain a FAC-P/PM-IT, some agencies may require additional competency requirements beyond the competencies established by FAI.
7. **Training.** The primary outcome of training is not to require a specific number of hours, but to provide an instructional approach best suited to deliver the learning outcomes that align to the competencies. While a specific curriculum is not articulated, training plans for the FAC-P/PM-IT that can assist agencies and individuals in determining their training and development needs are maintained by FAI at [www.fai.gov](http://www.fai.gov).
8. **Experience.** At least two years of program or project management experience supporting IT projects and programs is required. This experience may be included in the experience requirements for FAC-P/PM or may be in addition to that experience. This experience must include, as a

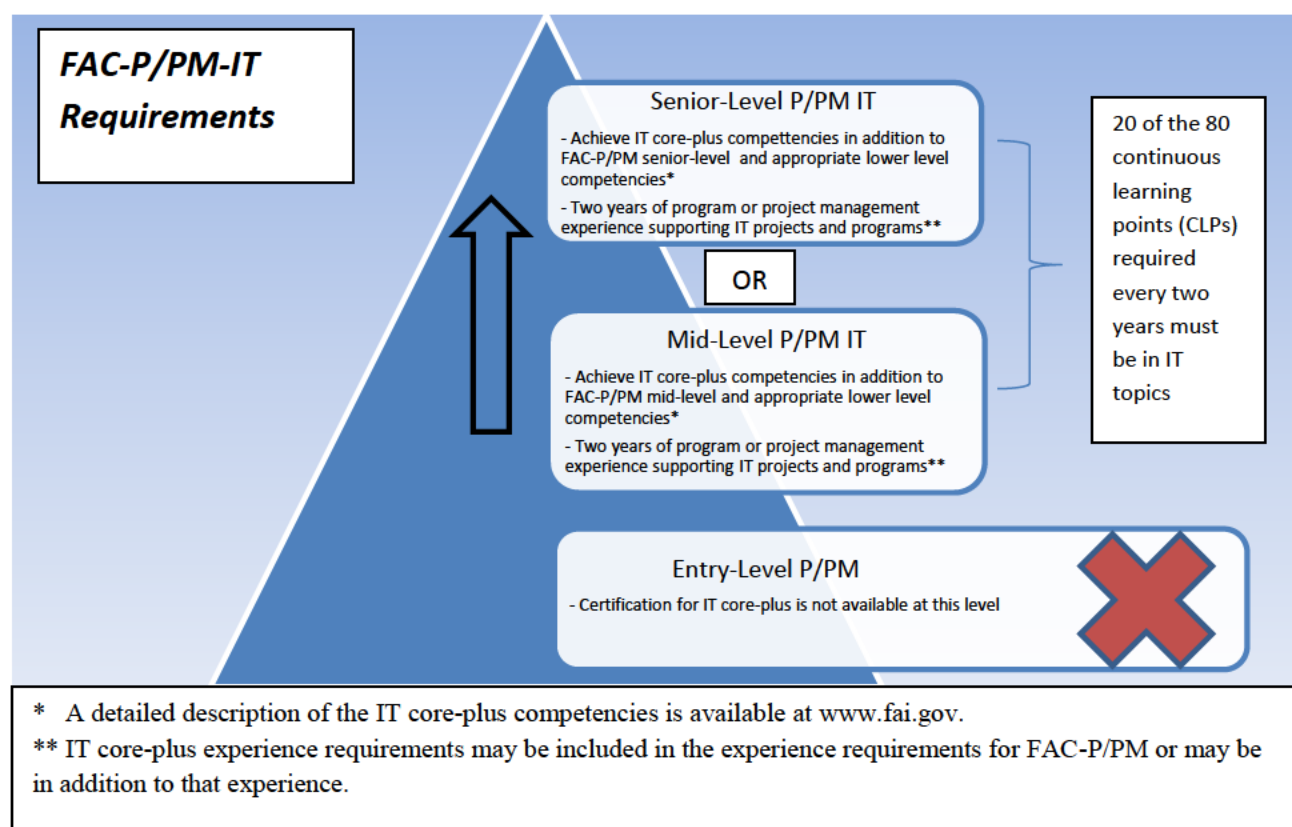
<sup>20</sup> Available at <http://www.whitehouse.gov/sites/default/files/omb/procurement/memo/guidance-for-specialized-acquisition-cadres.pdf>.

<sup>21</sup> Available at <http://www.chcoc.gov/transmittals/TransmittalDetails.aspx?TransmittalID=4058>.

minimum: identification of IT system requirements; the use, or knowledge and familiarity, of modular development methodologies; system integration into an Enterprise Architecture; and IT system testing and evaluation and other experience that results in gaining the FAC-P/PM-IT competencies. Recommended developmental opportunities are identified in appropriate career path documents such as OPM's *IT Program Management Career Path Guide* of November 2011<sup>22</sup>, or agency-specific guidance.

**9. Continuous Learning.** When selecting continuous learning activities for the 20 CLP specialization requirement as part of the overall 80 CLP requirement, emphasis should be directed toward key issues affecting IT Program and Enterprise Architectural success as identified by the Federal and Agency Chief Information Officers.

**10. Specialization Requirements.** The requirements for obtaining the FAC-P/PM-IT are detailed below.



<sup>22</sup> Available at [http://www.opm.gov/hrd/lead/Career\\_Path\\_IT\\_Management.pdf](http://www.opm.gov/hrd/lead/Career_Path_IT_Management.pdf).



**GAO**

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**Comptroller General  
of the United States**

**United States Government Accountability Office  
Washington, DC 20548**

**DOCUMENT FOR PUBLIC RELEASE**

The decision issued on the date below was subject to a GAO Protective Order. This redacted version has been approved for public release.

## **Decision**

**Matter of:** SRA International, Inc.

**File:** B-407709.5; B-407709.6

**Date:** December 3, 2013

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Robert S. Metzger, Esq., Jeffery M. Chiow, Esq., Patricia A. Meagher, Esq., and Oliya S. Zamaray, Esq., Rogers Joseph O'Donnell, for the protester.  
Paul F. Khoury, Esq., and Samantha S. Lee, Wiley Rein LLP, and Carl J. Peckinpugh, Esq., and Evan D. Wesser, Esq., for Computer Sciences Corporation, the intervenor.

Marie Cochran, Esq., General Services Administration, for the agency.  
Louis A. Chiarella, Esq., and Guy R. Pietrovito, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### **DIGEST**

1. Protest challenging an agency's evaluation of a potential unequal access to information organizational conflict of interest (OCI) is dismissed as academic where, the agency waived any OCI concerns under the authority granted to it by section 9.503 of the Federal Acquisition Regulation.

2. Protest of an agency's technical evaluation is denied where record shows that the evaluation was reasonable and consistent with the stated evaluation criteria.

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### **DECISION**

SRA International, Inc., of Fairfax, Virginia, protests the issuance of a task order to Computer Sciences Corporation (CSC), of Falls Church, Virginia, under task order request (TOR) No. GSC-QFOB-12-0020, issued by the General Services Administration (GSA), Federal Systems Integration and Management Center, to procure, on behalf of the Federal Deposit Insurance Corporation (FDIC), information technology (IT) services for the infrastructure support contract (ISC3). SRA argues

that the agency's evaluation of offerors' proposals and award decision were improper.<sup>1</sup>

We dismiss the protest in part and deny it in part.

## BACKGROUND

The FDIC is a self-funded (i.e., non-appropriated) entity of the federal government. The overall mission of the FDIC is to preserve and promote public confidence in the U.S. financial system by insuring deposits in banks and thrift institutions for up to \$250,000; by identifying, monitoring, and addressing risks to the deposit insurance funds; and by limiting the effect on the account holder and financial system when a bank or thrift institution fails. TOR § C.1.

The TOR was issued on June 12, 2012, to all contract holders under GSA's Alliant government-wide acquisition contract (GWAC)<sup>2</sup>, and provided for the issuance of a cost-plus-award-fee task order for a 6-month base period and four option years.<sup>3</sup> A detailed "performance-based statement of work" was provided describing the required services. TOR § C. Offerors were informed that the ISC3 task order would replace the prior ISC2 task order<sup>4</sup> and cover the day-to-day operations of the FDIC's IT infrastructure facilities, hardware, software, and systems. TOR § C.1. The solicitation also stated that the contractor was to provide the support activities that facilitate the FDIC's delivery of software applications by managing the underlying infrastructure, supporting release management, and providing operations and maintenance of the development, quality assurance, testing, production and disaster recovery environments, as defined by seven task areas. TOR § C.1.

The TOR provided for issuance of the task order on a best-value basis, considering the following evaluation factors: technical approach, key personnel and project staffing approach, management approach, corporate experience, and cost. TOR § M.5. Offerors were informed that the noncost factors were in descending order of

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<sup>1</sup> While the solicitation was issued using the procedures in Federal Acquisition Regulation (FAR) subpart 16.5, the TOR stated that it sought "proposals" from "offerors."

<sup>2</sup> The Alliant government-wide acquisition contract is a multiple-award, indefinite-delivery/indefinite-quantity (ID/IQ) contract for various information technology services.

<sup>3</sup> As result of corrective action taken by GSA in response to an earlier protest by SRA, the TOR was amended a number of times. Our references to the solicitation are to the TOR, as finally amended by amendment 9 on March 28, 2013.

<sup>4</sup> SRA is the incumbent contractor that performed the ISC2 task order.

importance and, when combined, were significantly more important than cost. TOR §§ M.1, M.5.

Detailed instructions were provided for the preparation of proposals under each factor. TOR § L. For example, with respect to the technical approach factor, offerors were informed that the TOR sought a “tailored technical approach” and that an offeror was required to “clearly describe its technical methodology in fulfilling the technical requirements identified in the TOR.” TOR § L.8.1. Offerors were informed that under this factor the agency would consider the “clarity and thoroughness” and the “effectiveness and efficiency” of the offeror’s technical approach.<sup>5</sup> See TOR § M.5.1.

Five offerors, including CSC and SRA, submitted proposals by the July 23 closing date. The technical proposals were evaluated by the agency’s technical evaluation board (TEB), which used the following adjectival ratings: excellent, good, acceptable, and not acceptable. The cost proposals were evaluated by different evaluators for reasonableness and realism. On October 12, the agency’s source selection authority (SSA) selected CSC’s proposal as the best value to the government, and a task order was issued to CSC.

On October 22, SRA protested to our Office, challenging the agency’s evaluation of proposals and selection decision. SRA filed supplemental protests on November 13 (following receipt of documents from GSA), and on December 7 (following receipt of the agency’s report). On December 13, GSA informed our Office that it would take corrective action in response to SRA’s protest by terminating CSC’s task order, seeking and evaluating revised proposals, and making a new selection decision. GSA Letter to GAO, Dec. 13, 2012, at 1-2. On December 19, we dismissed SRA’s protest as academic. SRA Int’l, Inc., B-407709 et. al, Dec. 19, 2012.

On March 6, 2013, GSA issued an amended solicitation for the ISC3 task order procurement. GSA received revised proposals from four offerors, including CSC and SRA. The parties’ revised proposals were evaluated as follows:

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<sup>5</sup> Similarly, the TOR informed offerors that the agency would evaluate the effectiveness and efficiency of the offeror’s key personnel/project staffing and management approaches. See TOR §§ M.5.2, M.5.3.



	CSC	SRA
Technical Approach	Good	Acceptable
Key Personnel and Project Staffing Approach	Good	Acceptable
Management Approach	Acceptable	Good
Corporate Experience	Acceptable	Excellent
<b>Overall Rating</b>	Good	Acceptable
Evaluated Cost <sup>6</sup>	\$365,462,364	\$361,922,439

Agency Report (AR), Tab 119, TEB Report, at 18; Tab 120, Source Selection Decision, at 61. The TEB's adjectival ratings were supported by a narrative report that detailed the proposals' respective strengths, weaknesses, risks, and deficiencies. For example with respect to the technical approach factor under which SRA's proposal received an acceptable rating, the TEB identified six strengths and eleven weaknesses. AR, Tab 119, TEB Report, at 47-50.

On August 14, the SSA again determined that CSC's proposal represented the best value to the government. Specifically, the SSA found that CSC's qualitative advantages under the technical approach and the key personnel and staffing approach factors--the two most important technical factors--outweighed SRA's cost advantage (\$3.5 million, or less than 1%) and higher ratings under the less important management approach and corporate experience factors. AR, Tab 120, Source Selection Decision, at 61-65.

This protest followed a debriefing on August 16.<sup>7</sup>

## DISCUSSION

SRA raises numerous challenges to the agency's evaluation of proposals and selection decision.<sup>8</sup> First, the protester contends that CSC has an organizational

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<sup>6</sup> The TOR stated a total estimated ceiling cost of between \$361,914,979 and \$435,223,578. TOR § L.5.

<sup>7</sup> As the value of this task order is in excess of \$10 million, this procurement is within our jurisdiction to hear protests related to the issuance of task orders under multiple-award indefinite-delivery, indefinite-quantity contracts. 41 U.S.C. § 4106(f)(1)(B).

<sup>8</sup> SRA initially challenged the agency's realism evaluation of CSC's cost proposal. We dismissed SRA's allegation as failing to set forth a valid basis for protest where the challenge was based only upon the fact that GSA had made no adjustments to  
(continued...)

conflict of interest (OCI) which GSA failed to identify or mitigate due to CSC's proposal of Blue Canopy Group, LLC, as a subcontractor. SRA also contends that GSA unreasonably evaluated SRA's proposal under the technical approach, key personnel/staffing approach, and management approach factors. SRA argues that had the agency conducted a proper evaluation of offerors' proposals, SRA's proposal would have been found to represent the best value to the government. Protest, Aug. 26, 2013, at 1-63.

We have considered all of the protester's arguments, although we address only its primary ones, and find that none provide a basis on which to sustain the protest.

#### Organizational Conflict of Interest

SRA protests that the agency failed to properly investigate and mitigate a significant OCI concerning CSC's subcontractor, Blue Canopy. According to the protester, Blue Canopy has been performing as the FDIC network security services contractor since at least 2009 and in this role monitors and audits network security on the FDIC's network. SRA states that its performance of the ISC2 task order contract was subject to security monitoring by Blue Canopy, and alleges that there were no limitations on Blue Canopy's access to information stored in or transiting through the FDIC's network. SRA alleges that Blue Canopy had unfettered access to all of SRA's documents and communications under the incumbent contract, including documents marked as proprietary and containing business sensitive information (e.g., staffing numbers, rates, salaries, planned changes to network infrastructure). SRA also implicitly alleges that Blue Canopy took SRA's information and shared it with CSC, thereby giving CSC an unfair competitive advantage in developing its proposal here. Lastly, SRA argues that the agency never investigated or mitigated this unequal access to information OCI.<sup>9</sup> Protest, Aug. 26, 2013, at 12-18.

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(...continued)

CSC's proposed costs. See George G. Sharp, Inc., B-408306, Aug. 5, 2013, 2013 CPD ¶ 190 at 1 n.1.

<sup>9</sup> The situations in which OCIs arise, as described in FAR subpart 9.5 and the decisions of our Office, can be broadly categorized into three groups: biased ground rules, unequal access to information, and impaired objectivity. See Organizational Strategies, Inc., B-406155, Feb. 17, 2012, 2012 CPD ¶ 100 at 5. As relevant here, an unequal access to information OCI exists where a firm has access to nonpublic information as part of its performance of a government contract and where that information may provide the firm a competitive advantage in a later competition. FAR §§ 9.505(b), 9.505-4; Networking & Eng'g Techs., Inc., B-405062.4 et al., Sept. 4, 2013, 2013 CPD ¶ 219 at 10. SRA initially also argued that CSC had an impaired objectivity OCI, and that two former SRA employees now working for Blue Canopy improperly had access to SRA proprietary and competitively useful information. Protest, Aug. 26, 2013, at 13-14, 16-17. SRA

(continued...)

The agency disputes that Blue Canopy's role as the FDIC network security services contractor provided it with access to any SRA information, and argues SRA has done no more than speculate that this "may" have occurred. AR, Sept. 25, 2013, at 12-14. The agency also argues that SRA's protest regarding CSC's alleged OCI is untimely, as the protester knew of this basis of protest as of November 1, 2012, when SRA received documents from GSA in SRA's prior protest of this same procurement showing that Blue Canopy was CSC's subcontractor. Id. at 8-12.

Late in the protest process, however, GSA advised our Office and the parties that the agency had waived any OCIs regarding the award to CSC, and requested that our Office dismiss the protest as academic. The FAR establishes that, as an alternative to avoiding, neutralizing, or mitigating an OCI, an agency head or designee, not below the level of the head of the contracting activity, may execute a waiver. Specifically, the FAR provides as follows:

The agency head or a designee may waive any general rule or procedure of this subpart by determining that its application in a particular situation would not be in the Government's interest. Any request for waiver must be in writing, shall set forth the extent of the conflict, and requires approval by the agency head or a designee.

FAR § 9.503.

Here, the agency's senior procurement executive prepared and executed a waiver under this FAR authority. Agency Waiver, Senior Procurement Executive Approval, Nov. 25, 2013, at 1-10. In light thereof, we find the protester's unequal access to information OCI allegation regarding CSC to be academic. See AT&T Gov't Solutions, Inc., B-407720, B-407720.2, Jan. 30, 2013, 2013 CPD ¶ 45 at 4. While the protester may seek to challenge the waiver, this decision reaches no conclusion on the waiver.

#### SRA's Technical Evaluation

SRA protests the agency's evaluation of its proposal under the technical approach, key personnel/staffing approach, and management approach factors. In general terms, the protester challenges various weaknesses assigned to its proposal,<sup>10</sup>

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(...continued)

subsequently withdrew these protest grounds. SRA Comments, Oct. 17, 2013, at 4; SRA Letter to GAO, Sept. 9, 2013, at 13-14.

<sup>10</sup> SRA initially challenged the weaknesses in its key personnel and project staffing approach proposal. Protest, Aug. 26, 2013, at 43-50. We consider this argument abandoned, since GSA provided a detailed response to the protester's assertions in its report (AR, Sept. 25, 2013, at 29-31), and SRA did not reply to the agency's

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contends that the assigned ratings were inconsistent with the stated evaluation criteria, and argues that its proposal was entitled to higher ratings. Protest, Aug. 26, 2013, at 28-43. Among other things, SRA complains that the irrationality of the agency's evaluation is demonstrated by the fact that a number of strengths identified in its proposal for these factors by individual evaluators in their own worksheets were not included in the TEB's final consensus report.

The weaknesses that SRA challenges were assessed under the technical approach and management approach factors and reflect the TEB's judgment that SRA failed to clearly explain its technical and management approaches to performing the work.<sup>11</sup> See AR, Tab 119, TEB Report, at 49-50 (11 technical approach weaknesses), 56 (1 management approach weakness). We have considered each of SRA's challenges to these weaknesses, and, although we do not address each specifically, find that SRA's arguments provide no basis to conclude that the agency's evaluation judgments were unreasonable.

#### Technical Approach Evaluation

For example, SRA complains that GSA's evaluation of its proposal under the technical approach factor was unreasonable, because the agency allegedly used an unstated evaluation criterion in evaluating in the protester's technical approach: the lack of implementation detail. Specifically, SRA argues that implementation detail was neither an express nor implied requirement of the TOR, and that offerors were not on notice that implementation detail of their proposed approaches would be evaluated.<sup>12</sup> Protest, Oct. 17, 2013, at 49-54.

As set forth above, the TEB identified 6 strengths and 11 weaknesses in SRA's technical approach, which the TEB assessed as acceptable. The evaluators found that, overall, SRA's proposal was "only somewhat" clear and comprehensive, that it

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response in its comments. See Citrus College; KEI Pearson, Inc., B-293543 et al., Apr. 9, 2004, 2004 CPD ¶ 104 at 8 n.4.

<sup>11</sup> SRA does not challenge all of the weaknesses assessed in its proposal under the technical approach factor.

<sup>12</sup> SRA also argues that, although not required, its proposal did provide adequate detail regarding many of the identified technical approach weaknesses. Protest, Aug. 26, 2013, at 36-42; Protest, Oct. 17, 2013, at 54-58. Our review, however, indicates the agency's evaluation of SRA's proposal to be reasonable and does not provide a basis on which to sustain the protest. Likewise, we find the one weakness identified in SRA's management approach (i.e., the offeror's approach to controlling costs did not provide insight into any cost control mechanisms) was also reasonable.

essentially “regurgitated” the TOR’s stated requirements with little detail as to how they would be accomplished, and that new or progressive approaches proposed by SRA also had little implementation detail.<sup>13</sup> AR, Tab 119, TEB Report, at 47-48. In fact, all eleven weaknesses identified in SRA’s technical approach concerned a lack of detail generally, including lack of detail regarding the offeror’s implementation plan, performance methodology, and execution strategy.<sup>14</sup> Id. at 49-50.

The task order competition here was conducted among ID/IQ contract holders pursuant to FAR subpart 16.5. The evaluation of proposals in a task order competition, including the determination of the relative merits of proposals, is primarily a matter within the contracting agency’s discretion, since the agency is responsible for defining its needs and the best method of accommodating them. Wyle Labs., Inc., B-407784, Feb. 19, 2013, 2013 CPD ¶ 63 at 6; Optimal Solutions & Techs., B-407467, B-407467.2, Jan. 4, 2013, 2013 CPD ¶ 20 at 6. Our Office will review evaluation challenges to task order procurements to ensure that the competition was conducted in accordance with the solicitation and applicable procurement laws and regulations. Logis-Tech, Inc., B-407687, Jan. 24, 2013, 2013 CPD ¶ 41 at 5; Bay Area Travel, Inc., et al., B-400442 et al., Nov. 5, 2008, 2009 CPD ¶ 65 at 9. A protester’s mere disagreement with the agency’s judgment is not sufficient to establish that an agency acted unreasonably. STG, Inc., B-405101.3 et al., Jan. 12, 2012, 2012 CPD ¶ 48 at 7.

We find that GSA’s consideration of how offerors’ would implement the technical approaches they were proposing was entirely consistent with the stated evaluation criteria. The “performance-based statement of work” required the contractor to provide “innovative, efficient, and cost-effective IT infrastructure support services.” TOR § C.1.1. The solicitation then instructed each offeror to “clearly describe its technical methodology [to] fulfilling the technical requirements identified in the TOR.” TOR § L.8.1. Finally, the TOR established that the evaluation here would include consideration of the “clarity and thoroughness of the [t]echnical [a]pproach,” and the “degree of effectiveness and efficiency of the offeror’s approach for meeting

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<sup>13</sup> One example of SRA’s lack of detail or explanation of methodology was the firm’s proposal of several technology initiatives, for which SRA provided a chart outlining high-level timeframes for introducing its proposed innovations (SRA also organized its technical approach around which technology would be leveraged each year). The TEB found that “little detail on the implementation methodology was provided. This caused concern for the TEB as to whether the proposed technologies were attainable within the time frame proposed.” AR, Tab 119, TEB Report, at 48.

<sup>14</sup> For example, the TEB found that while SRA suggested an [DELETED], no detailed methodology or execution strategy was provided. AR, Tab 119, TEB Report, at 49. Similarly, “[DELETED] were proposed [by SRA], but there were no details of how they plan to accomplish it.” Id.

the goals, objectives, conditions, and task requirements of the TOR.” TOR § M.5.1. In light thereof, the agency did not employ an unstated evaluation criterion when finding as a weakness that SRA’s proposal failed to detail the implementation plan and/or execution methodology of its proposed technical approach.<sup>15</sup> See Advanced Tech. Sys., Inc., B-296493.5, Sept. 26, 2006, 2006 CPD ¶ 147 at 16; Ridoc Enter., Inc., B-292962.4, July 6, 2004, 2004 CPD ¶ 169 at 4.

#### SRA’s “Lost Strengths”

SRA complains that a number of strengths that were initially assigned to its proposal by individual evaluators were subsequently omitted from the final consensus report without explanation (SRA collectively terms these its “lost strengths”). SRA alludes to a total of 71 “lost strengths”—52 under the technical approach factor, 7 under the key personnel and project staffing approach factor, and 12 under the management approach factor—which SRA argues demonstrates that GSA’s evaluation was not reasonable.

When evaluating offerors’ revised proposals, the agency’s evaluators first performed individual assessments of each offeror’s submission. The evaluators then held a question-and-answer session with each offeror (as set forth in the TOR), followed by a TEB consensus determination. The agency’s evaluation was memorialized in several documents: first there were the individual evaluator worksheets (AR, Tab 118); followed by TEB consensus notes (AR, Tab 117), and eventually a TEB final consensus evaluation report (AR, Tab 119). The TEB’s final report included both adjectival ratings and detailed narrative findings regarding each offeror. For example, in addition to a summary rationale for each evaluation rating, the TEB identified six strengths and eleven weaknesses in SRA’s technical approach, five strengths and two weaknesses in SRA’s key personnel and project staffing approach, eight strengths and one weakness in SRA’s management approach. AR, Tab 119, TEB Report, at 46-57.

The SSA’s selection decision was based upon the TEB’s final evaluation findings in its consensus evaluation report. AR, Tab 120, Source Selection Decision, at 61-64. The record shows that the SSA did not focus on the number of strengths and weaknesses identified in the proposals, or even if something had been identified as

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<sup>15</sup> Moreover, it is an offeror’s responsibility to submit a well-written proposal, with adequately detailed information, which clearly demonstrates compliance with the solicitation requirements and allows a meaningful review by the procuring agency. CACI Techs., Inc., B-296946, Oct. 27, 2005, 2005 CPD ¶ 198 at 5. A proposal that merely “parrots” back the solicitation’s requirements may reasonably be downgraded for lacking sufficient detail. Wahkontah Servs., Inc., B-292768, Nov. 18, 2003, 2003 CPD ¶ 214 at 7.

a strength or weakness. Rather, the SSA's best value tradeoff determination was based on the qualitative merits of each offeror's proposal. Id.

SRA nevertheless contends that the agency's evaluation was unreasonable because the final evaluation differed without explanation from the initial evaluation. While the protester acknowledges that some of the initial evaluator findings were duplicative in nature, and that in other instances a strength could be offset by a corresponding weakness, SRA argues that the agency's unjustified omission of the remaining "lost strengths" from its final evaluation was improper. Protest, Oct. 17, 2013, at 33-41.

The agency disputes the merits of the protester's argument here. As a preliminary matter, GSA points out that SRA's assertion is selective and unbalanced. Although the protester references its alleged "lost strengths," SRA makes no attempt to account for the numerous "lost weaknesses" also identified by the individual evaluators that were not in the final evaluation report (which SRA does not deny).<sup>16</sup> GSA Dismissal Request, Oct. 23, 2013, at 10. Further, the agency disputes SRA's central assertion that the strengths initially identified in the offeror's proposal were in fact "lost." AR, Oct. 30, 2013, at 10-12. In support thereof, the agency submitted a statement from the TEB Chairperson together with a "crosswalk" analysis to demonstrate that the final evaluation report consolidated all duplicative comments, grouped misplaced comments, and otherwise reconciled individual evaluator's initial impressions as appropriate.<sup>17</sup> Id. at 1-4. Moreover, the individual evaluator findings occurred prior to GSA conducting a question-and-answer session with SRA. Contracting Officer's Statement, Sept. 25, 2013, at 3-4. Thus, the agency's final evaluation report was not based on the same SRA proposal upon which the initial evaluation findings were premised.

We recognize that it is not unusual for individual evaluator ratings to differ from one another, or from the consensus ratings eventually assigned. Systems Research and Applications Corp.; Booz Allen Hamilton, Inc., B-299818 et al., Sept. 6, 2007,

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<sup>16</sup> For example, "Team SRA makes the assumption that all of the current staff and processes will step over to ISC3 and continue. This thought misses many of the critical activities and goals defined in the TOR." AR, Tab 118, SRA Individual Evaluator Notes (Technical - Task Area 1).

<sup>17</sup> For example, individual evaluators initially identified 11 strengths, weaknesses, and other comments for SRA's [DELETED], under the technical approach, key personnel and staffing approach, and management approach factors. During the consensus discussion, the TEB determined that SRA's [DELETED] tool should properly be assessed only under the management approach factor, and entered one strength under that factor. AR, Tab 134, TEB Chairperson Declaration, Oct. 30, 2013, at 2-3.



2008 CPD ¶ 28 at 18. Indeed, the reconciling of such differences among evaluators' viewpoints is the ultimate purpose of a consensus evaluation. J5 Sys., Inc., B-406800, Aug. 31, 2012, 2012 CPD ¶ 252 at 13; Hi-Tec Sys., Inc., B-402590, B-402590.2, June 7, 2010, 2010 CPD ¶ 156 at 5. Likewise, we are unaware of any requirement that every individual evaluator's scoring sheet track the final evaluation report, or that the evaluation record document the various changes in evaluators' viewpoints. J5 Sys., Inc., *supra*, at 13 n.15; see Smart Innovative Solutions, B-400323.3, Nov. 19, 2008, 2008 CPD ¶ 220 at 3. The overriding concern for our purposes is not whether an agency's final evaluation conclusions are consistent with earlier evaluation conclusions (individual or group), but whether they are reasonable and consistent with the stated evaluation criteria, and reasonably reflect the relative merits of the proposals. See, e.g., URS Fed. Tech. Servs., Inc., B-405922.2, B-405922.3, May 9, 2012, 2012 CPD ¶ 155 at 9 (a consensus rating need not be the same as the rating initially assigned by the individual evaluators); J5 Sys., Inc., *supra*, at 13; Naiad Inflatables of Newport, B-405221, Sept. 19, 2011, 2012 CPD ¶ 37 at 11.

Based on our review, we find the agency's evaluation was reasonable. The TEB's final evaluation report detailed the relative merits of SRA's proposal under each evaluation factor, as required by the solicitation. For example, the TEB more than adequately explained the basis for its conclusion that SRA's technical approach was acceptable: there were some strengths and some weaknesses (which the evaluators identified); the approach was "only somewhat clear, detailed, effective, and comprehensive;" and the lack of detail in certain areas caused concerns regarding achievability within the timeframes proposed. AR, Tab 119, TEB Report, at 47-48.

Further, we see nothing unreasonable in the existence of differences between the evaluators' preliminary findings and the final consensus evaluation findings of SRA's proposal. In performing its evaluation of offerors' proposals, an agency commonly relies upon multiple evaluators who often perform individual assessments before the evaluation team reaches consensus as to the evaluation findings. In doing so, it is not uncommon for the final group evaluation to differ from individual evaluator findings. Moreover, there is simply no requirement that agencies document why evaluation judgments changed during the course of the evaluation process. Rather, agencies are required to adequately document the final evaluation conclusions on which their source selection decision was based, and we review the record to determine the rationality of the final evaluation conclusions.

We also find our decision in Systems Research and Applications Corp.; Booz Allen Hamilton, Inc., *supra*, upon which SRA heavily relies, to be distinguishable. In Systems Research, the agency failed to qualitatively assess the merits of offerors' competing proposals: notwithstanding the fact that the offerors in that procurement

all had differing technical approaches, they were all found, without explanation, to be technically acceptable and equal.<sup>18</sup> We noted that although an agency is not required to retain every document or worksheet generated during its evaluation of proposals, the agency's evaluation must be sufficiently documented to allow review of the merits of a protest. Id. at 11. In Systems Research, however, given the nearly complete absence in the record of any assessment of the firms' different approaches, we found that the agency failed to reasonably evaluate the firms' proposals consistent with the solicitation (i.e., the agency's consensus evaluation documents did not discuss, to any meaningful degree, the differences between the proposals which the evaluators agreed existed). Id. at 25.

Unlike in Systems Research, the contemporaneous record here documents the agency's evaluation, allowing for our review of the reasonableness of the agency's evaluation judgments. As stated above, the overriding concern for our purposes is not whether the final ratings are consistent with earlier, individual ratings, but whether they reasonably reflect the relative merits of the proposals. Id. at 18. Further, in Systems Research, the eliminated strengths were seemingly warranted based on specific proposal content. Here, by contrast, SRA has only established that the "strengths" were "lost" between the initial individual and final TEB evaluations, but not that they were strengths at all, i.e., aspects of the offeror's proposal that exceeded stated requirements in a way beneficial to the government. See Protest, Oct. 17, 2013, at 33-41. Thus, we find SRA's "lost strengths" argument to be a red herring. Quite simply, the only thing SRA has demonstrated is that many of the agency's initial evaluation judgments did not become final evaluation judgments, not that the final evaluation judgments were unreasonable.

#### Number of Strengths

Lastly, SRA alleges that GSA's evaluation did not conform to the solicitation, as evidenced by statements made by the agency in its report to our Office. Protest, Oct. 17, 2013, at 41-46, citing AR, Sept. 25, 2013, at 27 ("the decision on the relative importance of [SRA's] strengths to the Government, or on whether these strengths outweighed its weaknesses . . . rested squarely with the TEB"). We find the protester's allegation unsupported by the record. Moreover, SRA's argument here reflects a fundamental misunderstanding of the evaluation process. An agency's evaluation is not to be based upon a mathematical counting of strengths and weaknesses, but rather, deciding what those strengths and weaknesses represent, in terms of qualitative assessments regarding the relative merits of the competing proposals. See Smiths Detection, Inc.; American Sci. & Eng'g, Inc., B-402168.4 et al., Feb. 9, 2011, 2011 CPD ¶ 39 at 14. It is an agency's qualitative findings in connection with its evaluation of proposals that govern the

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<sup>18</sup> This determination essentially converted a "best value" procurement into a low price/technically acceptable procurement.

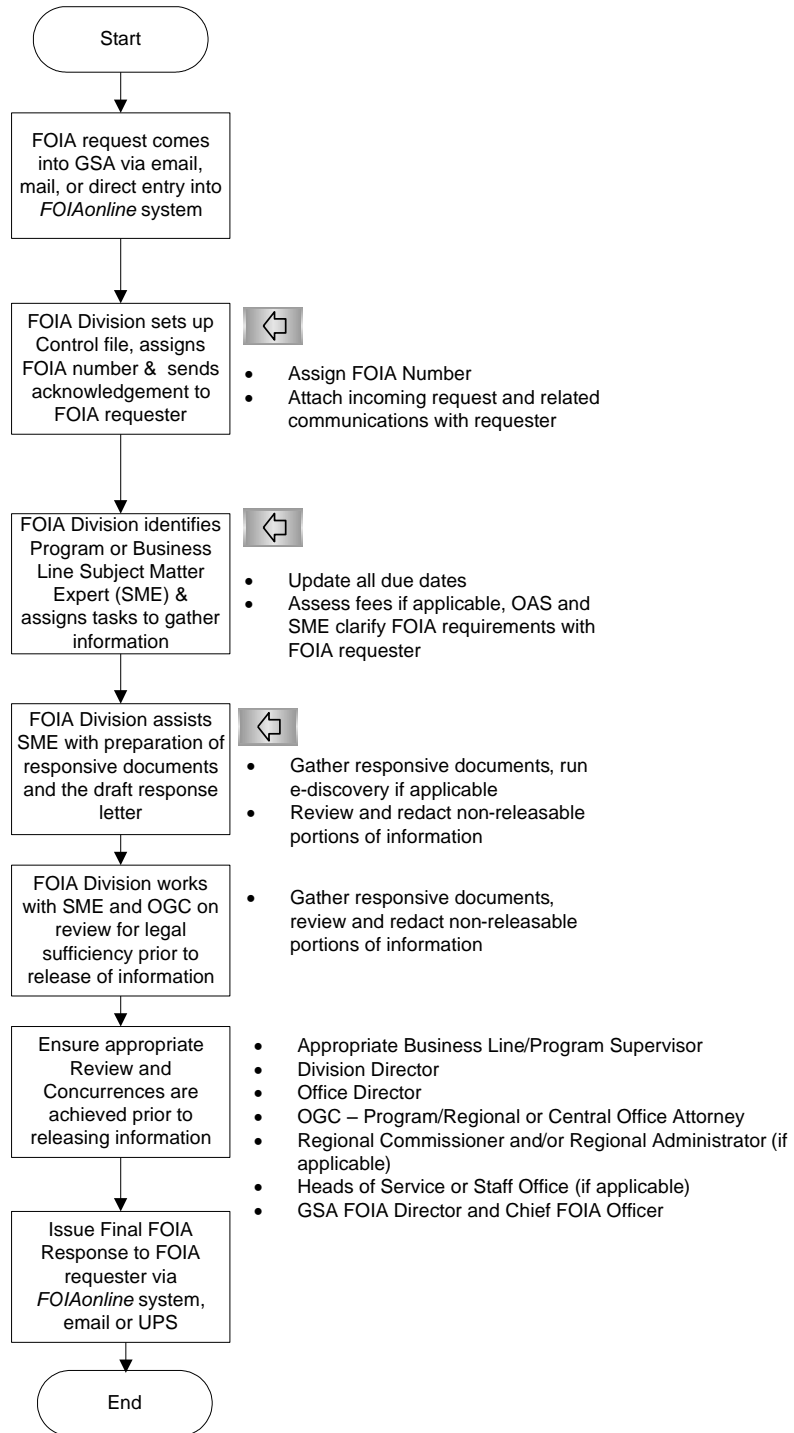
reasonableness of an agency's assessment of offerors' proposals. Walton Constr. - a CORE Co., LLC, B-407621, B-407621.2, Jan. 10, 2013, 2013 CPD ¶ 29 at 9; Archer W. Contractors, Ltd., B-403227, B-403227.2, Oct. 1, 2010, 2010 CPD ¶ 262 at 5. Whether these features were considered as strengths, and whether SRA's proposal was rated "acceptable" or "good," is immaterial provided that the agency considered the qualitative merits of the proposal features. Here, GSA clearly considered these features on the merits, and not on their characterization as strengths.

The protest is dismissed in part and denied in part.

Susan A. Poling  
General Counsel

# GSA FOIA Process Overview

General Services Administration  
OAS, FOIA and Records Management Division



# **Service Level Expectations from the Office of Administrative Services (OAS) FOIA Requester Service Center**

**OVERVIEW:** This Service Level Expectation (SLE) sets forth the duties and responsibilities of the Office of Administrative Services (OAS) FOIA Requester Service Center and Service and Staff Offices (SSO) in the processing, coordination and response of FOIA requests.

**BACKGROUND:** Under (5 U.S.C. § 552, As Amended By Public Law No. 110-175, 121 Stat. 2524, and Public Law No. 111-83, § 564, 123 Stat. 2142, 2184), The Freedom of Information Act (FOIA) is a United States federal law that grants the public access to information possessed by government agencies. Upon written request, U.S. government agencies are required to release information unless it falls under one of nine exemptions listed in the Act. All Executive Branch departments, agencies and offices, federal regulatory agencies and federal corporations are subject to the Freedom of Information Act. The FOIA does not apply to Congress, federal courts and parts of the Executive Office of the President that serve only to advise and assist the President.

**PURPOSE:** The purpose of the SLE is to explain the processes, procedures, duties, responsibilities and associated actions to effectively and efficiently execute FOIA requests between the OAS, FOIA Requester Service Center and its GSA counterparts within the statutory time limits set forth by the Department of Justice (DOJ).

**GENERAL COMMUNICATION PROTOCOL:** The FOIA Requester Service Center must be notified in advance of any communication with/to the requester.

## **RESPONSIBILITIES:**

### **OAS FOIA Requester Service Center:**

- Manage requests from the time the request is received until the time a response is provided to the requester.
- Determine whether the information resides within GSA or another Federal Government Agency.
- Send an acknowledgment letter to the requester informing them of this action.
- Determine whether a fee waiver or expedited process applies to the FOIA.
- Determine which business line is most likely responsible for the records being requested.
- Work with the SSO to determine a Subject Matter Expert (SME) to research, collect and review the information responsive to the request.
- Coordinate with the SSO POC and/or SME to determine the scope, timeframes, due dates, and fees involved with completing the request.
- Provide assigned SME the templates of the response letter, assurance letter, fee determination sheets, U.S. General Services Administration Credit Card Collection Claims and Billing Form (3602B form) etc. to ensure consistency and standardization.
- Monitor the request to ensure it is moving efficiently through the process and meets established timeframes and due dates. The timeframes and due dates to be carefully monitored are:

- o **Original 20-Business Day Due Date:** The FOIA provides that the standard twenty-day time period begins on the date the request is first received by the appropriate SSO, but no later than ten days after the request is first received by any component within the agency that is designated by the agency's regulations to receive FOIA requests. The proposed response documents are due to the FOIA Requester Service Center three (3) business days prior to the FOIA due date.
- o **10-Business Day Extensions.** In “**unusual circumstances**”, an agency can extend the twenty-day time limit for processing a FOIA request if it tells the requester in writing why it needs the extension and when it will make a determination on the request. The FOIA defines “unusual circumstances” as (1) the need to search for and collect records from separate offices; (2) the need to examine a voluminous amount of records required by the request; and (3) the need to consult with another agency or agency business line”. This statutory 10-day extension of time can only be granted **once**.
- o **Negotiated Extensions.** The SME will notify the FOIA Requester Service Center if they will need additional time (beyond the original 20-business day and 10-business day extension) to respond to the request [Insert days]. Once notified, the FOIA Requester Service Center will notify the requester via email to negotiate a new due date. In order to make the negotiated due date official, the requester must concur/approve in writing. So if additional time is needed after the ten day extension has been exhausted, the business line must contact the FOIA Requester Service Center. The FOIA Requester Service Center will in turn contact the requester to allow them the opportunity to modify their request or to arrange an alternative time frame with the requester for completion of the agency's processing. If a negotiated timeframe is arranged with the requester, that change must be obtained in writing. A copy of this change must be uploaded into the FOIAonline system, before the due date can be changed.
- Maintain communication with the requester regarding status updates, clarifications, due dates, extensions, fee waiver requests, expedited processing and approving and issuing of final fees.
- Review the proposed final package submitted by the SME to ensure all appropriate concurrences and signatures have occurred before final review, approval and release to the requester. In General, proper concurrences will typically include:
  - Appropriate Business Line Supervisors;
  - Division Director;
  - Office Director;
  - Office of General Counsel (OGC) (Program/Regional Attorney);
  - Regional Commissioner and/or Regional Administrator (if applicable)
  - Heads of Service or Staff Office (if applicable);
- Review the responsive documents to make sure all redactions are properly noted in the proposed response letter.
- Review the proposed response letter to ensure proper format, free from grammatical errors; it explains what is being released and what is being withheld and why specific information is being withheld, the appeal paragraph is included if information is being withheld and the SME's contact information.

- Release the material to the requester via FOIA Online email or United States Postal Service.
- Maintain a complete record of all activities, correspondence, emails, draft and final responsive documents, etc. in the FOIA Online system.

### **Service and Staff Offices:**

- Provide the most recent organizational chart, with names, of their structure to the GSA FOIA Requester Service Center. The purpose of providing the organizational chart is to ensure that both parties know the latest structure of the Business Line or Program Office in order to effectively disseminate FOIA information.
- Notify and send directly to the FOIA Requester Service Center any FOIA request that comes directly to their business line or regional office within two (2) business days.
- Within five (5) business days of receiving the FOIA request from the FOIA Requester Service Center, notify the FOIA Requester Service Center of the following (if necessary):
  - Any necessary FOIA request clarifications
  - If an Extension/Negotiated Due Dates is necessary
  - Any FOIA Fees associated with the FOIA
- Using the GSA FOIA Requester Service Center provided templates and worksheets, prepare and forward the fee package (fee assurance letter, fee determination sheet and 3602B form) to the FOIA Requester Service Center. The FOIA Requester Service Center will assist SMEs throughout this process as it is necessary.
- Have the Subject Matter Expert (SME) locate and gather all GSA records and documents that are responsive to the FOIA requester's FOIA request.
- Review and redact all documents responsive to the request. Redacted elements of the responsive documents will include the appropriate exemption highlighted. Upload a copy of the original and redacted documents into the FOIAonline system.
- Obtain the concurrence of the Office of the General Counsel (OGC) staff assigned to your organization on all proposed redactions.
- Strive to meet all established timeframes and due dates established by the FOIA Requester Service Center. Key timeframes and due dates are:
  - **Original 20-Business Day Due Date** (This is the original date received in the GSA FOIA Office). The proposed response documents are due to the FOIA Requester Service Center three (3) business days prior to the FOIA due date.
  - **10-Business Day Extensions.** The FOIA allows that under unusual circumstances, a FOIA can extend the twenty-day time limit and **one ten (10) business days** extension can be granted for the following justifiable reasons: (1) the need to search for and collect records from separate offices; (2) the need to examine a voluminous amount of records required by the request; and (3) the need to consult with another agency or agency business line). This statutory 10-day extension of time can only be granted once. The proposed fee assurance letter, fee determination sheet and credit card form (GSA Form 3602B) must be submitted to the FOIA Requester Service Center within six (6) business days of receiving the request.
  - **Negotiated Extensions.** The SME will notify the FOIA Requester Service Center if they will need additional time (beyond the original 20-business day

and 10-business day extension) to respond to the request. Once notified, the FOIA Requester Service Center will notify the requester via email to negotiate a new due date. In order to make the negotiated due date official, the requester must concur/approve via email. The proposed negotiated due date letter must be submitted to the FOIA Requester Service Center within six (6) business days of receiving the request or four (4) business days of the extension due date.

- Notify the FOIA Requester Service Center, five (5) calendar days prior to due date, if they are unable to meet the due date and need additional time to complete the collect, review, and/or coordination of the draft response package.
- Review, verify and validate that the final responsive documents are complete and without errors.
- Draft the proposed response letter in the approved FOIA Requester Service Center format – Templates will be provided by the FOIA Requester Service Center.
- Upload the responsive documents into FOIA Online (both Redacted and Un-redacted Versions). This step must occur at least two (2) business days prior to the FOIA due date.
- Notify the FOIA Requester Service Center when the response has been completed and uploaded to FOIA Online and is ready for the final review and coordination.

#### **KEY POLICIES AND REFERENCE MATERIALS:**

1. **28 C.F.R. Part 16 – Code of Federal Regulations**; Title 28 - Judicial Administration; Part 16 – Production or Disclosure of Material or Information; Subpart A - Procedures for Disclosure of Records Under the Freedom of Information Act (July 01, 2013)
2. The Department of Justice Guide to the Freedom of Information Act, website <http://www.justice.gov.oip/doj-guide-freedom-information-actsite>
3. Freedom of Information Act Memorandum - Implementation of Changes Delegated Authority to Release or Deny FOIA Information (December 18, 2012)
4. ADM 5450.161 – GSA Delegation of Authority – FOIA Delegation of Authority (November 16, 2012)
5. GSA FOIA Desktop Manual (September 2015)
6. FOIA.GOV <http://www.foia.gov>
7. FOIA Online <https://foiaonline.regulations.gov/foia/gsa>
8. FOIA Online Helpdesk (844) 238-7744



February 8, 2017

**AGENDA**

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- 9:00 - 9:15 AM:** Meet & Greet with PBS, NCR Leadership  
**Room 1065**  
POC: Thomas James, Deputy Regional Commissioner  
Paula Demuth, Regional Counsel, Acting Regional Administrator
- 9:15 - 10:30 AM:** NCR, PBS Organization Overview  
**Room 1065 A**  
POC: Thomas James  
Allison Azevedo, Acting Director, Office of Portfolio and Leasing
- 10:30 - 11:30 AM** Meeting with the Regional Commissioner  
**Room 1065 B**  
POC: Mary Gibert, Regional Commissioner
- 11:30 - 12:00 AM** Asset Repositioning  
**Room 7912**  
POC: Ivan Swain, Director, Office of Portfolio Management
- 12:00 - 1:00 PM** PBS Senior Leadership Team Brown Bag  
**Room 7912**  
POC: Dawn Stalter
- 1:00 - 2:00 PM** Lease Projects Division Meeting  
**Room 7912**  
POC: Ben Winters, Director, Lease Projects Division
- 2:00 - 3:00 PM** Office of Facilities Management  
**Room 7912**  
POC: Barbara Sisco, Director, Facilities Program Support
- 3:00 - 4:00 PM** Office of Planning and Design Quality  
**Room 4011**  
POC: Kristi Tunstall, Director, Historic Preservation and the Arts Division
- 4:00 - 4:30 AM** Q&A  
**Room 1065 B**  
POC: Dawn Stalter

## **STOCK Act Frequently Asked Questions**

Below you will find a list of questions and answers dealing with the Periodic Transaction Report. If you have any questions about this new periodic transactions reporting requirement, please contact the Ethics Law Staff at 202-501-0765.

### **1. Who is required to file a Periodic Transaction Report?**

All employees who are required to file Public Financial Disclosure Reports (often referred to as an OGE Form 278e) are required to file a Periodic Transaction Report.

### **2. What must be reported on a Periodic Transaction Report?**

You must report any sale, purchase, or exchange of stock, bonds, commodities futures, or other forms of securities owned or acquired by you, your spouse, or dependent children if the amount of the transaction exceeds \$1,000.

You are **not** required to report the purchase, sale, or exchange of excepted investment funds (such as mutual funds), real estate, treasuries, life insurance, annuities, cash accounts, and assets in a retirement system maintained by the United States such as the Thrift Savings Plan (TSP) on your Periodic Transaction Report. Although these transactions are not required to be reported on a Periodic Transaction Report, many of them are reportable within the Transaction part (Part 7) of your annual or termination Public Financial Disclosure Report (such as mutual funds and certain real estate interests). **Therefore**, see **Question 6** below for a discussion on why you may choose to report these types of transactions on a Periodic Transaction Report anyway.

### **3. Do I need to report my spouse and dependent children's transactions on the periodic transactions report?**

Yes, as of January 1, 2013, you are required to include your spouse and dependent children's assets on a Periodic Transaction Report.

### **4. When must a Periodic Transaction Report be filed?**

The STOCK Act requires employees to file a Periodic Transaction Report within 30 days of being notified of a transaction, but in no circumstances later than 45 days from the date of the actual transaction. Periodic transaction reporting is therefore subject to two different deadlines. Because of the STOCK Act, you need to file a Periodic Transaction Report:

- Within 30 days of you receiving notification of a transaction, but
- No later than 45 days after the transaction occurs.

For example, if you receive an online confirmation of a transaction on the day it occurs, you will have to file your Periodic Transaction Report with the Ethics Law Staff within the next 30 days.

Sometimes, however, you may not receive notification of a transaction right away. In that case, the 45 day deadline can shorten the period for filing your report. For example, if you received notification on August 7<sup>th</sup> of a transaction which occurred on July 3<sup>rd</sup>, you would have to file your periodic transactions report by August 17<sup>th</sup>, 45 days from the date of the actual transaction. Please see the last three pages of this guidance document for additional examples of the 30 and 45 day rules.

Remember: Whenever you receive immediate notification of a stock transaction, you will have 30 days to complete and submit your Periodic Transaction Report within [Integrity.gov](https://www.integrity.gov). The 45 day rule only comes into play if you do not receive immediate notification of a stock transaction.

**Because of the 30 and 45 day rules, GSA strongly encourages you to receive monthly statements from your broker detailing your transactions.** If you only receive quarterly statements, you may end up violating the periodic transaction reporting requirement of the STOCK Act because you may not be notified of a transaction until after 45 days have passed. Under this provision of the STOCK Act, the longest you have to report a transaction is 45 days from the date of the transaction.

While adhering to the 15<sup>th</sup> of the month deadline will generally ensure that you meet the 30 and 45 day requirements, it is possible in rare circumstances you may have to report transactions before the 15<sup>th</sup> in order to ensure the transactions are reported within the 30 and 45 day requirements.

#### **5. If I have no reportable transactions, do I need to submit a negative Periodic Transaction Report?**

No. You only need to submit a Periodic Transaction Report if you have reportable transactions. You are not required to file a negative Periodic Transaction Report if you do not have reportable transactions.

#### **6. Do I need to make duplicate filings of transactions on both the periodic transactions reports and subsequent annual or termination Public Financial Disclosure report?**

As long as you have listed a transaction on a Periodic Transaction Report, there is no need to list that same transaction within the Transactions part (Part 7) of your annual or termination Public Financial Disclosure Report.

## **7. How do I report my periodic transactions?**

You must assign yourself a Periodic Transaction Report and submit the report within [Integrity.gov](https://integrity.gov). In order to assign yourself a report, you must:

- Login into [Integrity.gov](https://integrity.gov)
- Click on "278-T" within the "My Tools" section on the "My Tasks" page
- Type in your "position" information
- Select the Start button

## **8. What will GSA do with my Periodic Transaction Report?**

GSA must make all Periodic Transaction Reports public within 30 days of the reports being received by the agency. Within 60 days of receipt, the Ethics Law Staff will review the periodic transaction reports to ensure there are no conflicts between the reported transactions and your position.

## **9. Can GSA grant me an extension for filing a Periodic Transaction Report?**

Yes, GSA can grant an extension for filing a Periodic Transaction Report for good cause, such as being on extended sick leave.

## **10. Does the \$200 late fee apply to the Periodic Transaction Reports?**

Yes. The \$200 late filing fee is applicable to Periodic Transaction Reports, though not to individual transactions. If you file your Periodic Transaction Report in a timely manner, and inadvertently omit a purchase or sale from the report, you will not be subject to the \$200 late fee for omitting the transaction as long as you can demonstrate you attempted in good faith to comply with the applicable disclosure requirements and merely made an inadvertent error or omission.

### Additional Examples of the 30 and 45 day rules:

Example 1 (30 day rule): You purchase stock on July 3, 2012, and received notice of the transaction on that same day (as noted in green below). Because you received notice of the stock purchase on July 3, 2012, you must submit your Periodic Transaction Report by August 2, 2012, due to the 30 day requirement (as noted in light blue). By adhering to GSA's recommended due date of the 15<sup>th</sup>, you would report this transaction on your Periodic Transaction Report filed on July 15, 2012.

JULY							2012	AUGUST							2012
M	T	W	T	F	S	S		M	T	W	T	F	S	S	
						01				01	02	03	04	05	
02	03	04	05	06	07	08		06	07	08	09	10	11	12	
09	10	11	12	13	14	15		13	14	15	16	17	18	19	
16	17	18	19	20	21	22		20	21	22	23	24	25	26	
23	24	25	26	27	28	29		27	28	29	30	31			
30	31														

Purchase Date

Transaction Report Due (30 days)

GSA Recommended Due Date

Example 2 (45 day rule): You receive a statement on August 10 (as noted in orange below) regarding a purchase made on July 3 (as noted in green below), you must report the purchase on or before August 17 (as noted in red below). Although the 30 day period from notification ends on September 9, the 45 day period from the date of the transaction ends earlier. You may not file your transaction report more than 45 days after the date of your actual transaction, regardless of when you were notified of the transaction.

JULY							2012	AUGUST							2012	Date Statement Received
M	T	W	T	F	S	S		M	T	W	T	F	S	S		
						01				01	02	03	04	05		
02	03	04	05	06	07	08		06	07	08	09	10	11	12		
09	10	11	12	13	14	15		13	14	15	16	17	18	19		
16	17	18	19	20	21	22		20	21	22	23	24	25	26		
23	24	25	26	27	28	29		27	28	29	30	31				
30	31															

Actual Purchase Date

GSA Recommended Due Date

Transaction Report Due

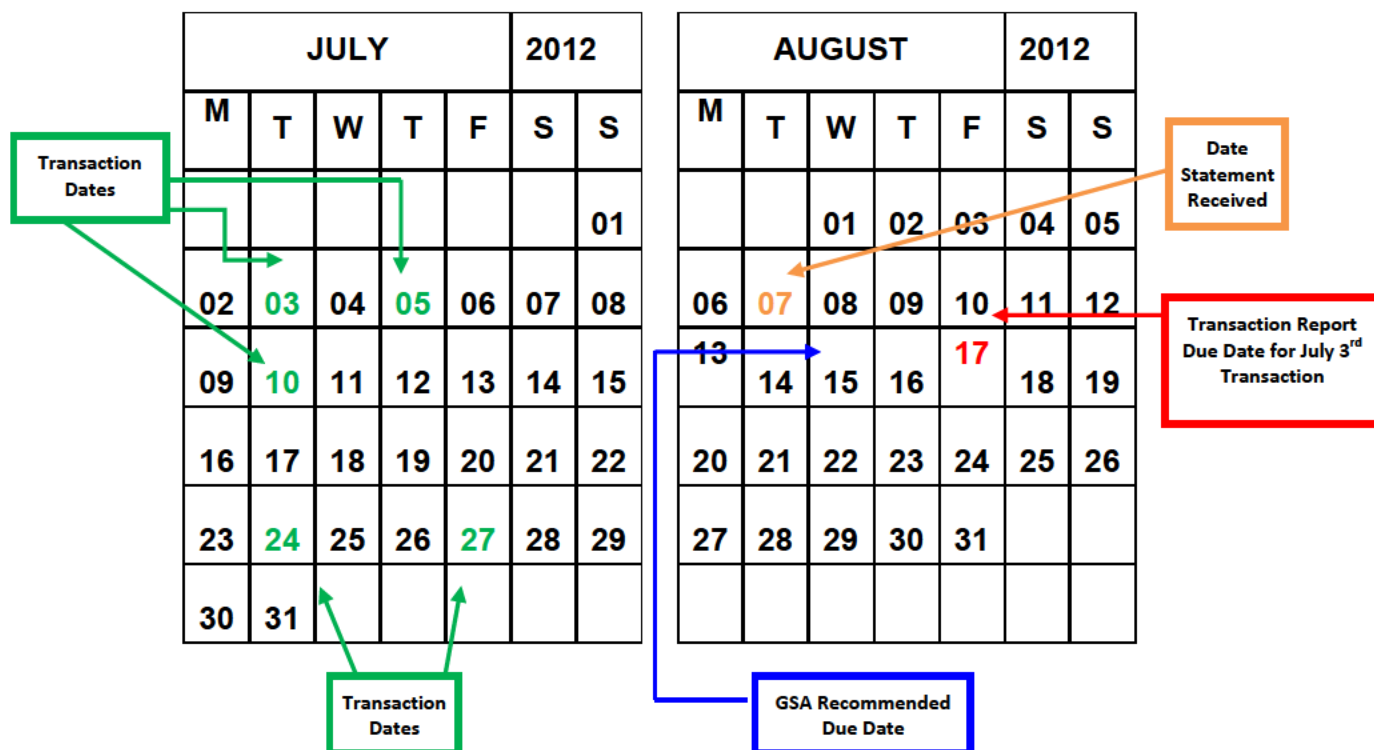
Example 3 (30 and 45 day rule): When you have multiple transactions which occur in one month, it can be confusing, as illustrated in this example.

You receive a statement from your broker on August 7, 2012 (noted in orange below), regarding five transactions which occurred on July 3, 5, 10, 24, and 27 (these transactions are noted in green below). You must complete a Periodic Transaction Report for transactions identified above as follows:

- For the July 3<sup>rd</sup> transaction, you must file a Periodic Transaction Report with the Ethics Law Staff by August 17, 2012 because that is 45 days from the date of that transaction.
- For the July 5<sup>th</sup> transaction, you must file a Periodic Transaction Report with the Ethics Law Staff by August 19<sup>th</sup>, again because of the 45 day rule.
- For the July 10<sup>th</sup> transaction, you must file a Periodic Transaction Report with the Ethics Law Staff by August 24<sup>th</sup> because of the 45 day rule.
- However, you would have to report your July 24<sup>th</sup> and July 27<sup>th</sup> transactions by September 6<sup>th</sup>, because of the 30 day rule. As noted earlier, a filer must report transactions within 30 days of receiving notification of a transaction but in no case more than 45 days from the date of the actual transaction. Since you were notified of the July 24<sup>th</sup> and July 27<sup>th</sup> transactions on August 7<sup>th</sup>, you will have 30 days from the date of notification to submit your Periodic Transaction Report because the 30 day period from notification is sooner in time than the 45 day period from the transaction itself. Thirty days from August 7<sup>th</sup> is September 6<sup>th</sup>.

If you then receive an email notification from your broker on August 10, 2012, of another transaction that occurred on that same day, your Periodic Transaction Report for that transaction would be due by September 9, 2012, which is 30 days from the date of the notification.

If you adhere to GSA's recommended due date, you would include these transactions on your Periodic Transaction Report due August 15, 2012. Your August 15, 2012, periodic disclosure report would be timely with regard to all of these transactions because they occurred within the past 45 days and notification occurred within the past 30 days.



While adhering to the 15<sup>th</sup> of the month deadline will generally ensure that you meet the 30 and 45 day requirements, it is possible in rare circumstances you may have to report transactions before the 15<sup>th</sup> in order to ensure reportable transactions are reported within the 30 and 45 day requirements.

If you have any questions on the STOCK Act, please contact the Ethics Law Staff at (202) 501-3516.



### SUMMARY OF QUALIFICATIONS

- 22 years of military and federal civilian leadership experience in increasing roles of government responsibility covering congressional, defense, technology, and disabled veteran interests
- Managed Senate legislation for acquisition, foreign relations, space, nuclear, missile defense, and veterans affairs policy for Senator Mike Rounds (R-SD) and Senator Joe Manchin (D-WV)
- Northern Virginia coordinator for the Veterans for Trump coalition effort since Sept. 2015
- Volunteer for the Trump Presidential Transition Team's policy implementation staff and the 58<sup>th</sup> Presidential Inauguration Committee's Salute to Our Armed Services Inaugural Ball
- Successful manager of multi-million dollar military and federal acquisition programs

### PROFESSIONAL WORK EXPERIENCE

**U.S. Senate, *Defense and Veteran Congressional Fellow*** Washington, DC | Jan. 2016 – Present

- One of five veterans selected in a nationwide competition for a fellowship in the U.S. Senate
- Experienced in policy analysis and hearing preparation for defense and veterans affairs issues
- Authored Fiscal Year 2017 defense legislative and budget justification language for the Senate
- Prepared member-interest letters and amendments for defense authorizations and appropriations
- Coordinated casework and congressional visits for defense, veterans, academia, and industry

**U.S. Military Academy (West Point), *Research Program Director*** New York | 2011 – 2015

- Directed defense, space, missile defense, nuclear, and cyber policy research programs and taught multiple courses contributing to Forbes ranking of West Point as a Top 10 College in America
- Selected for and completed a highly-competitive Defense Advanced Research Projects Agency (DARPA) Fellowship focused on national security technology and wounded warrior medicine
- Host Committee planner for veteran town hall events that discussed policy and health issues among veterans, their families, and congressional members and staff

**Army Space Program Office, *Assistant Program Manager*** Virginia, Texas, Global | 2003 – 2011

- Managed space and airborne intelligence programs appropriated at over \$35 million resulting in the successful deployment of mission control systems to front-line U.S. combat forces
- Deployed to Iraq, Afghanistan, and South Korea to assess geospatial-intelligence, cyber, communications, and missile defense technology gaps and develop rapid prototype solutions

**Army Field Artillery Branch, *Commander and Staff Officer*** Oklahoma, Global | 1994 – 2001

- Served seven years in leadership positions of increasing responsibility covering command and staff support of military units with over 80 soldiers and \$50 million of real property
- Deployed to Bosnia to provide executive liaison between NATO member nations

### RECENT POLITICAL VOLUNTEER EXPERIENCE

- Assisted Matt Miller, the Trump Campaign's Veteran Policy Director, with the preparation of media talking points and debate materials supporting the Trump 10-Point VA Reform Plan
- Assisted two Presidential Transition Team Sherpas with coordinating Senator office visits
- Assisted the 58<sup>th</sup> Presidential Inauguration Committee with inaugural ball preparations
- Assisted Bob Carey, the Republican National Committee's Veterans Program Director, with opposition research and veteran volunteer outreach activities in Virginia and Florida
- Assisted John Jagers and Mark Lloyd with veteran outreach, call center operations, and campaign rally support at Trump Campaign events in Virginia, Maryland, and DC

(b) (6)

#### EDUCATION

- Congressional Research Service's Advanced Legislative and Appropriations Institute – 2016
- Defense Acquisition University Executive Workshop for Congressional Staff – 2016
- Air War College Diploma (with a focus on Cybersecurity and Space Operations) – 2015

(b) (6)

#### ACQUISITION, POLICY, AND TECHNOLOGY CERTIFICATIONS

- Defense Acquisition Workforce Improvement Act (DAWIA) Certifications in:
  - Acquisition Program Management – 2007
  - Systems Engineering – 2007
  - Science and Technology Policy Management – 2007
- Department Threat Reduction Agency (DTRA) Certifications in:
  - Nuclear Weapon Operations and Surety – 2013
  - Weapons of Mass Destruction Incident Command and Control – 2013
- Army War College Certification in Strategic Policy and Planning – 2011
- Licensed Professional Engineer (PE) in Mechanical Engineering – 2004

#### REFERENCES

(b) (6)

## Set up and Navigation of Integrity.gov

### First Time Users Set Up

- I. How to Log-In to Integrity.gov
  - a. Go to <https://integrity.gov>
  - b. Click on the “login to Integrity” button
  - c. You will be taken to MAX.gov to create your I.D. and password
    - i. Your I.D. will be your government e-mail address ( i.e. john.doe@gsa.gov )
    - ii. To set up your password you will click on change your password
      1. Your password must contain 8-20 characters. There must be at least 1 upper case letter, 1 lower case letter, and 1 number. It must be different from your last 6 passwords. It can't contain your e-mail/username or any of these characters =?<>(),'^&
    - iii. You can also link your PIV card with a PIN to your MAX.gov account, which allows you to access Integrity with your PIV card in the future.
  - d. Once you have set up your password return to “login to Integrity” screen and enter in your e-mail/username and password to access Integrity.gov

### Navigation of Integrity.gov

- II. Navigating and Accessing Financial and Other Reports in Integrity.gov
  - a. Go to <http://integrity.gov>
  - b. Log in using your MAX.gov credentials (GSA e-mail address and your password OR use your PIV card)
    - i. Your first time logging in you will need to enter your pertinent information; name, address, phone and e-mail
    - ii. Click on Integrity User Agreement & Rules of Behavior For Federal Employees.
    - iii. Read & Accept Agreement
    - iv. Check box – “I have read & accept the terms of the agreement
    - v. Click submit
  - c. On the left side of the screen, you will see the “My Tasks” area. It is divided into three parts:
    - i. **My Current Reports:** Displays any assigned, started, or review-in progress reports you have; **THIS IS WHERE YOU GO TO COMPLETE ANY OUTSTANDING REPORTS**
    - ii. **My Tools:** located in the middle and includes links to the periodic transaction report (278-T), your contact information, and a link to manage any designees you authorize to enter data for you: Go here to start a new 278-T, add or remove designee and update your contact info
    - iii. **My Past Reports:** At the bottom, displays links to any of your previously completed reports, where you can access and print completed reports

**If you have any questions, please contact the Ethics Law Staff at 202-501-0765.**

# United States Court of Appeals for the Federal Circuit

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**SRA INTERNATIONAL, INC.,**  
*Plaintiff-Appellant,*

**v.**

**UNITED STATES,**  
*Defendant-Appellee,*

**AND**

**COMPUTER SCIENCES CORPORATION,**  
*Defendant-Appellee.*

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2014-5050

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Appeal from the United States Court of Federal  
Claims in No. 1:13-CV-00969, Judge Susan G. Braden.

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Decided: September 15, 2014

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JEFFERY M. CHIOW, Rogers Joseph O'Donnell, P.C. of Washington, DC, argued for plaintiff-appellant. With him on the brief were ROBERT S. METZGER and OLIYA S. ZAMARAY. Of counsel was PATRICIA A. MEAGHER, of San Francisco, California. Of counsel on the brief was MICHAEL J. SCHAENGOLD, Patton Boggs LLP, of Washington, DC.

STEVEN M. MAGER, Trial Attorney, Commercial Litigation Branch, Civil Division, United States Department of Justice, of Washington, DC, argued for defendant-appellee United States. On the brief were STUART F. DELERY, Assistant Attorney General, ROBERT E. KIRSCHMAN, JR., Director, DONALD E. KINNER, Assistant Director, and CHRISTOPHER J. CARNEY, Trial Attorney. Of counsel on the brief were MARIE COCHRAN, Assistant General Counsel, Personal Property Division, United States General Services Administration, of Washington, DC; and KATHRYN R. NORCROSS, Senior Counsel, DUNCAN N. STEVENS and ROBERT J. BROWN, Counsel, Federal Deposit Insurance Corporation, of Arlington, Virginia.

CARL J. PECKINPAUGH, Computer Sciences Corporation, of Falls Church, Virginia, argued for defendant-appellee Computer Sciences Corporation. With him on the brief was EVAN D. WESSER. Of counsel on the brief were PAUL F. KHOURY and SAMANTHA S. LEE, Wiley Rein LLP, of Washington, DC.

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Before PROST, *Chief Judge*, NEWMAN and TARANTO, *Circuit Judges*.

PROST, *Chief Judge*.

SRA International, Inc. (“SRA”) appeals the dismissal of its bid protest in which it alleged that the General Services Administration (“GSA”) violated various laws by waiving an organizational conflict of interest (“OCI”) after awarding a task order to Computer Sciences Corporation (“CSC”) for services to be rendered to the Federal Deposit Insurance Corporation (“FDIC”). Although dismissing the case on other grounds, the United States Court of Federal Claims held that it had jurisdiction over the challenge to the validity of the OCI waiver under the Tucker Act, despite the Federal Acquisition Streamlining Act of 1994 (“FASA”) bar on jurisdiction over protests “in connection

with the issuance or proposed issuance of a task or delivery order,” 41 U.S.C. § 4106(f)(1) (2012). *SRA Int’l, Inc. v. United States*, No. 1:13-cv-00969, 2014 U.S. Claims LEXIS 16 (Fed. Cl. Jan. 13, 2014) (“*Order*”). Because the GSA executed the disputed OCI waiver in connection with the issuance of the task order, we vacate and remand with instructions to dismiss the case for lack of jurisdiction.

#### BACKGROUND

Appellant SRA provided network infrastructure support to the FDIC since 2009 under the GSA’s Millennia Government-Wide Acquisition Contract (“GWAC”). *Order* at \*1–2. SRA provided these services pursuant to a task order referred to as ISC-2. *Id.* at \*2. While SRA had worked under ISC-2, Blue Canopy Group, LLC (“Blue Canopy”) conducted security audits for the FDIC of SRA’s network security. *Id.* at \*3.

In June 2012, the GSA issued a Task Order Request pursuant to the Alliant GWAC, which superseded the Millennia GWAC. *Id.* at \*2. Though the services were to be provided to the FDIC, the GSA procured the task order. *See* J.A. 180. In October 2012, the GSA awarded a task order to appellee CSC. *Order* at \*2. SRA protested the award to the Government Accountability Office (“GAO”), and the GSA terminated the task order for convenience. *Id.* The GSA then reissued the Task Order Request with certain corrective amendments, and, on August 14, 2013, the GSA again awarded a task order to CSC—referred to as ISC-3—for more than \$365 million. *Id.* at \*3.

SRA filed a second protest to the GAO for the award of ISC-3 on August 26, 2013, alleging that there were two OCIs based on CSC’s intended use of Blue Canopy as a subcontractor: “impaired objectivity”; and “unequal access to information.” *Id.* SRA alleged that Blue Canopy’s work with the FDIC gave Blue Canopy “access to SRA’s proprietary information” and knowledge of “how the FDIC

evaluated SRA's work," which SRA argued led to the alleged OCIs. *Id.*

In light of the OCI allegations, the GSA informed the GAO that CSC agreed to drop Blue Canopy as a subcontractor under ISC-3. *Id.* at \*4; J.A. 178. SRA conceded that this cured any alleged "impaired objectivity" OCI, but insisted that the GAO continue the protest under the "unequal access to information" OCI. *Order* at \*4. SRA maintained that CSC and Blue Canopy violated FDIC regulations (as specifically referenced in Sections H.9.1 and K of the revised Task Order Request) by submitting false certifications, prior to being awarded ISC-3, that no OCIs existed. *See* Appellant's Br. 5; J.A. 194–95, 199–200; *Order* at \*4; 12 C.F.R. §§ 366.12(e)(2), 366.14 (2014).

On November 25, 2013, the GSA issued a waiver under Federal Acquisition Regulation ("FAR") 9.503 of the remaining alleged OCI. *Order* at \*4; J.A. 174–83. The GSA found the possibility of an OCI to be "exceedingly remote and unsubstantiated," but opted to waive any that may exist. J.A. 174. The GAO then dismissed SRA's protest as "academic." J.A. 481.

On December 9, 2013, SRA filed a post-award bid protest at the Court of Federal Claims seeking declarations that the OCI waiver is void for failing to satisfy FDIC law and regulations and for failure to set forth the extent of the OCI. J.A. 197–201. SRA also sought a permanent injunction preventing award of ISC-3 to CSC due to the alleged false certifications and argues that any task order issued to CSC "is void *ab initio*, illegal and a nullity." J.A. 200–01. SRA further sought a declaration that, because the GSA could have awarded SRA the task order, it was "arbitrary, capricious and unreasonable to make an illegal award to an invalid offeror" (i.e., CSC). J.A. 201.

The Government moved to dismiss for lack of jurisdiction under FASA because the contract at issue is a task order. *Order* at \*7, \*9. In pertinent part, FASA provides:

(1) Protest not authorized.—A protest is not authorized *in connection with the issuance or proposed issuance of a task or delivery order* except for—

. . . .

(B) a protest of an order valued in excess of \$10,000,000.

(2) Jurisdiction over protests.—. . . [T]he Comptroller General shall have exclusive jurisdiction of a protest authorized under paragraph (1)(B).

41 U.S.C. § 4106(f) (emphasis added).

SRA asserted that the court had jurisdiction to decide the validity of the OCI waiver under the “third prong” of Tucker Act jurisdiction and argued that FASA did not apply because the protest was not “in connection with the issuance or proposed issuance” of ISC-3. *Order* at \*15–17. The Tucker Act provides the court with jurisdiction:

to render judgment on an action by an interested party objecting [(i)] to a solicitation by a Federal agency for bids or proposals for a proposed contract or [(ii)] to a proposed award or the award of a contract or [(iii)] *any alleged violation of statute or regulation in connection with a procurement or a proposed procurement*.

28 U.S.C. § 1491(b)(1) (2012) (emphasis added).

The Court of Federal Claims denied the Government’s motion, holding it had jurisdiction to decide SRA’s claims concerning the validity of the waiver.<sup>1</sup> *Order* at \*28.

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<sup>1</sup> The Court of Federal Claims explained during a conference with the parties that it considered its jurisdiction was limited to the issue of “whether the waiver was



Important to its decision was the “fact that the Waiver was issued well after the award”—here, 102 days later. *Id.* at \*24–25. Also important was the notion that waiver under FAR 9.503 “is a matter left to agency discretion.” *Id.* at \*25. Thus, according to the court, “not only [was] the Waiver in this case discretionary, it [was] also distinct—in both a temporal and causal sense—from the ISC-3 Task Order.” *Id.* at \*26. The court then sought a GAO advisory opinion to determine “whether the Waiver violated APA standards and, if so, to adjudicate the merits of the August 26, 2013 protest.” *Id.* at \*28–29; 4 C.F.R. § 21.11(b) (2014).

The GAO issued an advisory opinion, determining that the waiver was not arbitrary or capricious. It further stated that, had the GSA not issued the waiver, the GAO “would have found the issue untimely and not considered the merits” because SRA was purportedly aware that Blue Canopy would be a CSC subcontractor by November 2012, during SRA’s first protest. J.A. 5–7. The Government then moved to dismiss the case, which the Court of Federal Claims granted, stating that, “[i]n light of the GAO’s January 31, 2014 response, . . . SRA’s remaining claims are moot.” J.A. 3. The court accordingly entered final judgment for the Government. J.A. 1. SRA appealed and we have jurisdiction over this appeal pursuant to 28 U.S.C. § 1295(3) (2012).

#### DISCUSSION

We review decisions of the Court of Federal Claims on the scope of its jurisdiction without deference. *See Blueport Co. v. United States*, 533 F.3d 1374, 1378 (Fed. Cir. 2008). We also review questions of statutory and regula-

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improper.” J.A. 369; *see also* J.A. 380 (“[J]urisdiction here is pretty limited.”).

tory construction without deference. *See Billings v. United States*, 322 F.3d 1328, 1332 (Fed. Cir. 2003).

The issue here is whether SRA’s protest of the GSA’s act of issuing the OCI waiver falls under the FASA bar. For purposes of the present case, we simply accept the parties’ characterization of this issue as jurisdictional. SRA argues that jurisdiction under the Tucker Act’s “third prong” for any “alleged violation of statute or regulation in connection with a procurement” is broad, while the FASA bar on protests “in connection with the issuance” of a task order is a narrow exception. *See* Appellant’s Br. 25. SRA asserts that FASA does not cover protests “[w]here the alleged violation concerns acts that are temporally separated, or represent independent exercises of agency discretion distinct from issuance or proposed issuance” of the task order. *Id.* at 27.

SRA relies largely on *Distributed Solutions v. United States*, 539 F.3d 1340 (Fed. Cir. 2008). There, the agency had tasked a contractor under an existing task order with “selecting the vendors who would provide the software for the relevant [additional] functions.” *Id.* at 1343. We held that the protestor’s objection to the agency’s decision to forgo normal competition requirements alleged a violation of law “in connection with a procurement or proposed procurement” (under the Tucker Act’s third prong). *Id.* at 1345–46. We did not discuss FASA in the opinion.

Appellees argue that the GSA executed the OCI waiver “in connection with the issuance” of ISC-3 because every allegation in SRA’s complaint is connected to issuance of the task order. *See* Gov’t’s Br. 22. Appellees assert that the most convincing evidence that the FASA bar applies is the remedy SRA sought—namely, “SRA actually sought to have the trial court set-aside a task order award to CSC.” *Id.* at 16; *see, e.g., id.* at 24–25. Appellees also argue that the timing and discretionary

nature of the waiver are irrelevant under the plain language of FASA. *See id.* at 30–34; CSC’s Br. 19, 24–25.

We hold that the Court of Federal Claims erred in exercising jurisdiction over SRA’s claims because SRA’s protest of the OCI waiver is “in connection with the issuance” of ISC-3. The statutory language of FASA is clear and gives the court no room to exercise jurisdiction over claims made “in connection with the issuance or proposed issuance of a task or delivery order.” Even if the protestor points to an alleged violation of statute or regulation, as SRA does here, the court still has no jurisdiction to hear the case if the protest is in connection with the issuance of a task order. We acknowledge that this statute is somewhat unusual in that it effectively eliminates all judicial review for protests made in connection with a procurement designated as a task order—perhaps even in the event of an agency’s egregious, or even criminal, conduct. Yet Congress’s intent to ban protests on the issuance of task orders is clear from FASA’s unambiguous language.

Additionally, we note that Congress has enacted multiple amendments to FASA that indicate Congress’s reaffirmed intent to bar protests on the issuance of task orders. In 2008, Congress amended FASA to give the GAO exclusive jurisdiction for protests to the issuance of task orders exceeding \$10 million, which would expire in 2011. *See* National Defense Authorization Act for Fiscal Year 2008, Pub. L. No. 110–181, § 843, 122 Stat. 3, 239. In 2011, Congress amended this sunset provision for GAO jurisdiction to extend through 2016. *See* National Defense Authorization Act for Fiscal Year 2012, Pub. L. No. 112–81, § 813, 125 Stat. 1298, 1491 (2011). In each instance, Congress left the general ban on protesting the issuance of task orders undisturbed.

Here, neither the discretionary nature of the OCI waiver nor the temporal disconnect between it and the

issuance of ISC-3 removes it from FASA's purview. First, nothing in FASA's plain language carves out an exception for discretionary agency actions. And the process of issuing a task order undoubtedly includes many discretionary decisions on the part of the agency.

Second, nothing in FASA's language automatically exempts actions that are temporally disconnected from the issuance of a task order. And here, the OCI waiver was directly and causally connected to issuance of ISC-3, despite being executed after issuance. The GSA issued the waiver in order to go forward with CSC on ISC-3. The only reason for the delay appears to have been due to the fact that the GSA was not aware of the OCI allegations earlier. *See* J.A. 177–78. The GSA could have executed a waiver prior to awarding ISC-3, so the timing is inconsequential. Even SRA acknowledges that, had GSA waived the alleged OCI prior to issuance, FASA would have barred its protest. *See* Oral Arg. 10:05–11:10 *available at* <http://www.cafc.uscourts.gov/oral-argument-recordings/2014-5050/all>. Thus, although a temporal disconnect may, in some circumstances, help to support the non-application of the FASA bar, it does not help SRA here. *See Global Computer Enters. v. United States*, 88 Fed. Cl. 350, 410, 412 (2009) (exercising jurisdiction over post-award modification to issued task order); *cf. generally Distributed Solutions*, 539 F.3d at 1342–46.

Further demonstrating the connection between the waiver and issuance of ISC-3 is the relief SRA seeks—i.e., rescission of the task order's issuance. Though not necessarily dispositive, we agree that it supports the conclusion that SRA's protest is actually with the issuance of the task order, rather than the waiver alone. *See Mission Essential Pers., LLC v. United States*, 104 Fed. Cl. 170, 178–79 (2012) (declining jurisdiction over decision to partially re-compete issued task orders, noting “[p]articularly telling [was] the relief sought”); *Unisys Corp. v. United States*, 90 Fed. Cl. 510, 517, 520 (2009)

(exercising jurisdiction over decision to override automatic statutory stay where relief sought was instituting stay).

Each of SRA's allegations attacks the waiver or some consequential effect of the waiver. *See* Appellant's Br. 29–32; J.A. 196–201. Because we hold SRA's protest of the waiver was “in connection with the issuance” of ISC-3, the Court of Federal Claims had no jurisdiction to hear any of the counts alleged in SRA's complaint. The arguments concerning the GAO advisory opinion and the court's dismissal order are therefore moot.

Accordingly, we vacate the order on jurisdiction and remand with instructions to dismiss the case for lack of jurisdiction.

**VACATED AND REMANDED**

## Top 10 Reasons to Leverage Automated BD Tools

1. Calculate the required pipeline size (replace "gut feel" and rules of thumb)
2. Determine root causes for slower-than-expected growth
3. Reliably project organic revenue growth (or shrinkage) by increasing precision around pipeline conversion
4. Provide a consistent, quantitative, meritocratic basis for evaluating opportunities and making pursuit decisions
5. Highlight weaknesses to refocus capture efforts
6. Provide a comparative baseline to measure and report capture progress against other bidders' progress
7. Smartly allocate B&P based on corporate objectives
8. Allocate B&P at the opportunity level by ROI, not award value or page count
9. Mitigate end-of-year B&P squeeze
10. Promote consistent best practices rather than personality-based idiosyncrasies

## Improving BD Visibility, Efficiency, and Results

- Abandon the "bid more, win more" refrain and – with increased visibility – replace it with "shape more, win more"
- Streamline BD processes – too much BD (and B&P) spending is wasteful and ineffective; focus on substance over process
- Leverage BD tools and quantitative metrics to drive productivity, increase accountability, reduce costs, and improve results
- Use the opportunity pipeline as a proactive resource allocation decision support tool, not just a static reporting artifact
- Use bid evaluation tools to measure relative capture progress and highlight areas that require attention and focus
- Move the B&P budgeting process from "here's what you get" to a managed, optimized, dynamic, ROI-based allocation process

### The Demise of Donkey B&P

"Bid more, win more" is a fool's errand championed by those who think that the easiest way to win more awards is merely to submit more bids. This approach may have had some merit in the most commoditized segments of the market that were most ravaged by LPTA, but it made no sense for the vast majority of bidders. Competitive pressures are not likely to abate, and companies cannot afford the luxury of "donkey B&P." While bid volume is important, precious B&P is wasted in pursuit of opportunities that are weakly qualified, ineffectively captured, incorrectly priced, and poorly written. The solution is not to submit more of these losers, but rather to fix the underlying processes by leveraging tools. Winners employ systematic approaches with objective and iterative assessment and refinement, compelling value propositions, and clear accountability.

### Table Stakes

Few things are as foundational in the government contracting business as the fundamental identity Leads→Bids→Awards→Revenue. Bid pipeline erosion, contract value puffery (BD claims invariably exceed actual awards), contract cancellations, de-obligations, and delays are all facts of life...and they are nothing new. Expect them, plan for them, compensate for them. Wolf Den's **Pipeline Optimization and Induction Tool (POINT)** is a 2-state transition model that solves for required pipeline size based on revenue, contract portfolio, and growth objectives. Wolf Den's **Deconstructed Iterative Conversion and Erosion (DICE)** model provides the computational "dual" – taking current pipeline and estimating revenue growth (or shrinkage) based on critical user-defined variables. Both models generate multi-year forecasts with the fidelity to differentiate blended pipelines of new and recompute opportunities.

### Are You Truly Well-Positioned?

The market is replete with simplistic p(win) "calculators" which prey upon mathematically challenged business developers, capture managers, and executives. These divining rods fail because they do not account for the inherently relative nature of p(win). It is axiomatic that the sum of the p(win) probabilities for single award procurements for all bidders cannot exceed 1. Yet, these charlatans omit this zero-sum game reality and as a result, the sum of all bidders' p(win), using this very same tool, often exceeds 100%. Clearly the computational model and underlying logic is flawed. While not a p(win) calculator,

B&P (\$M)	Corp Decision -- Total B&P Spending as a % of Rev							Budget (\$M)
	0.50%	0.75%	1.00%	1.25%	1.50%	1.75%	2.00%	
\$ 0.50	\$ 0.50	\$ 0.8	\$ 1.0	\$ 1.3	\$ 1.5	\$ 1.8	\$ 2.0	\$ 1.80
10%								
15%								
20%								
25%								
30%								
35%								
40%								
45%								
50%								
55%								
60%								

Wolf Den's **Bid Evaluation Tool (BET)** provides an objective framework (not just open-ended questions) to assess opportunities. BET scores highlight areas needing more attention and provide visibility through the entire capture and proposal lifecycle.

### Pot Odds

Few problems are as commonplace in our in-

dustry as companies running out of B&P before the end of their fiscal year and Proposal Managers exceeding their B&P budgets. Proposal efforts vary widely in what it takes to win. Similarly, how much a company should budget for capture/proposal is as much driven by Section L and the competition as it is by the estimated contract value. Most make decisions on the margin – taking a Capture Manager's B&P request and arbitrarily reducing it. In response, Capture and Proposal Managers often pad their requests and routinely ignore their budgets. While B&P budgets can and should vary based on unique circumstances, Wolf Den's **B&P Assessment Model (BAM)** provides a useful tool to guide the "should cost" B&P budget allocation process and avoid the end-of-year budget squeeze. If you are not using these types of tools, then as the poker analogy goes, you may be the donkey.



## Top 12 Keys to Winning Oral Presentations

1. *Pick personnel based on audience and presentation skills*
2. *Focus early effort on storyboarding every slide and creating compelling graphics*
3. *Involve presenters in slide creation; they need to "marinate in the sauce"*
4. *Infuse humor and make connections; it is important to be respected and liked*
5. *Minimize executive roles; evaluators want to hear from the delivery team*
6. *Get a coach with domain knowledge who can help with substance, not style*
7. *Develop mock Q&A with tough questions to temper presenters*
8. *Work 1:1 with all presenters; don't just rehearse as a group*
9. *Rehearse before finalizing slides; revise slides as needed*
10. *Videotape late-stage rehearsals; help presenters improve*
11. *Leave cell phones at home or in your car. No exceptions.*
12. *Be prepared for anything; "Murphy" is king of orals*

## A Valentine's Day Guide to Better Orals

- Focus on substance – compelling content is key – and develop in parallel with the proposal. The best orals are not an afterthought
- Pick presenters based on the audience and ability to inspire confidence and build trust; presentation skills matter (a lot)
- Engage orals coaches who want to be involved shaping the presentation (not just coach the presenters)
- Tailor the presentation to both the presenters and the audience; avoid a one-size-fits-all approach to orals
- Accord the presentation the same degree of review, scrutiny, and iteration you would every other part of a proposal
- Be prepared for test problems and even government observation of how your team collaborates and develops its response

### Portnoy's Complaint

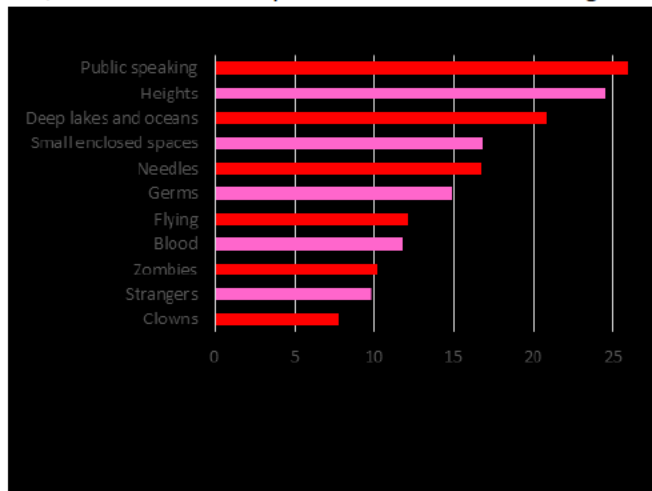
Driven by increasing frustration with proposals that bear little resemblance to what bidders ultimately deliver, the government has increasingly turned to orals-only and hybrid written/orals proposals. As a result, companies must sharpen their orals skills, and not treat orals as an afterthought by merely throwing together a PPT deck after they have put a ribbon on the written volumes. Unlike a written proposal, evaluators will size up the team based on their orals "performance" – their impressions of confidence, commitment to partnership, collaboration, leadership skills, and technical competence and understanding. Evaluator perceptions of key people trump corporate qualifications and executive rhetoric.

### Kinsey Reports

The orals coaching cottage industry, with bidders turning to self-styled experts (orals coaches) to prepare their presenters, is ill-suited for this shift in orientation. Like Alfred Kinsey, their methods are vague and results more anecdotal than scientific. An orals presentation is far more than a high pressure public speaking engagement; consultants who are executive speech coaches are best left to the Toastmasters circuit. We have worked hand-in-hand with dozens of orals coaches over the years and found that most are more concerned with presentation style than substance. Few are able (or willing) to help develop the message and craft the slides; rather, they are content to focus on imparting a one-size-fits-all presentation style, complete with warmed over platitudes, simplistic thinking, and slavish adherence to silly rules like "you shouldn't have more than 4 bullets on a slide," or "do not ever use the color red," and "avoid the fig leaf position."

### Masters and Johnson

Good orals coaches have the gravitas to effectively speak truth to power and to put winning ahead of presenters' feelings (especially when a key person should be replaced). The best coaches get involved in early hands-on slide craft, iterate with presenters through desktop walkthroughs and videotaped dry runs, provide tailored and hard-hitting mock Q&A, and plan for everything that can go wrong and all possible contingencies. Developing an orals proposal is every bit as labor intensive and expensive as a written proposal. Less is more, and while the content can be at a higher level, every slide needs to



convey a clear message with the presenter inspiring confidence and bringing the slides to life (not just reading the slides).

### Dr. Ruth

To bring orals into the modern era, Wolf Den's think → draw → write proposal development paradigm applies, just as it applies to written proposals. The best presentations, like their written counterparts, are graph-

ics heavy, with at least ¾ of slides having artwork that helps to tell the story. Graphics illustrate the approach, enabling the presenter to focus on the key takeaways and themes, not rote explanations. This is particularly true for technical approach slides (and no, a 1970s-era flowchart with rectangular boxes and diamond-shaped decision branches is not a good graphic). Beyond the orals deck, selecting key personnel who will "show well" at orals – not always the best leaders or managers (likeability and leadership are not always well aligned) – is the key to a successful orals performance. Repetitive, missionary, monotonous, slide-after-slide delivery of bullets will fail to get reviewers across the finish line even if delivered by the best of performers.